

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

560 SEVENTH AVENUE OWNER SECONDARY LLC,

Debtor.

Case #23-11071-pb

New York, New York

August 3, 2023

11:00 o'clock calendar

INITIAL CASE CONFERENCE; DOC 10, MOTION FOR RELIEF FROM
STAY FILED BY HARVEY A. STRICKON ON BEHALF OF AREPIII MVTS, LLC
AND CREP TIMES SQUARE HOTEL LLC

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1 COURTROOM DEPUTY: Good morning. This is Greg White,
2 the courtroom deputy. We're here this morning on case number
3 23-11071, 560 Seventh Avenue Owner Secondary LLC, on an initial
4 case conference and a motion for relief from stay. At this time
5 for those who wish to speak, please go ahead and state your name
6 for the record, and who you represent, please.

7 MR. NASH: Good morning, Kevin Nash for the debtor.

8 MR. STRICKON: Harvey Strickon, Paul Hastings,
9 attorney for the secured parties, AREPIII MVTs, LLC, and CREP
10 Times Square Hotel LLC.

11 MR. MARKOWITZ: Good morning, Scott Markowitz, Tarter
12 Krinsky Drogin, for Garment Center Synagogue. We may or may not
13 need to speak, but we also have Deborah Bernstein from my office
14 here. And we also have a law student, who'll be listening in, a
15 summer intern in our firm, Adam Jones is listening in.

16 MS. BERNSTEIN: Good morning.

17 MR. LEVIN: Good morning. Can you hear me?

18 THE COURT: Yes. Sorry about that, Your Honor. Jason
19 Levin, on behalf of the Independent Managers. Likewise, you may
20 or may not have to chime in, but I'm here nonetheless. Thank
21 you.

22 MR. MASUMOTO: Good morning. Brian Masumoto for the
23 Office of the United States Trustee.

24 COURTROOM DEPUTY: Okay, thank you. And the judge
25 will be out in just a moment.

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1 THE COURT: Good morning, everybody. My apologies for
2 keeping you waiting. We're here on two matters this morning, a
3 status conference and a lift-stay motion. Unless parties want
4 to weigh in and ask me to reconsider, I think it probably makes
5 sense to start with the status conference before turning to the
6 lift stay motion.

7 MR. NASH: Good morning, Your Honor, Kevin Nash for
8 the debtor. In terms of the status, the case was filed on July
9 9, 2023. It was filed, as the motion papers indicate, in
10 response to a mezzanine foreclosure sale. The debtor owns the
11 membership interest of the Margarita Resort Hotel. We are
12 working on filing the hotel itself in very short order. And I
13 understand that the 341 meetings and other administrative
14 matters are scheduled, I think, for early next week. And we
15 have uploaded to the docket a bar date order, I believe. The
16 schedules and statements have been filed. And I submitted my
17 retention papers to the United States Trustee's Office. And we
18 responded over the weekend to the lift-stay motion.

19 THE COURT: Okay. And Mr. Nash, can you give me any
20 more clarity on the likely timing of the filing of the hotel?

21 MR. NASH: Yes, I think I can. Since the better part
22 of the weekend, I have been in direct negotiations with the
23 senior lender. We've been going back and forth since Sunday
24 afternoon on the terms of a cash collateral stipulation. I
25 think we're in the last legs of that. Updated budgets have been

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1 provided to the senior lender. We exchanged emails as of last
2 night. One of the issues that we wanted to clear was an issue
3 on cash collateral. We wanted that to be consensual. There's a
4 current lockbox arrangement in place where the collections of
5 the hotel go into a lockbox that will be maintained on the cash
6 collateral stipulation. There's a payroll that has been funded
7 into ADP on Tuesday for prepetition payroll, and that's usually
8 made by early afternoon, around noon on Friday. We wanted to
9 clear that. Over the last several days, we have finalized
10 negotiations with the hotel union on an MOU, which was finalized
11 yesterday, and we wanted to clear that and have that executed
12 before the filing. And so, I'm targeting either late tomorrow
13 afternoon or Saturday morning for the filing.

14 THE COURT: And apologies if you've said this; I might
15 have missed it. You're expected DIP lender, is this a new party
16 to the case, or is it one of your incumbent existing lenders?

17 MR. NASH: No, it's a new party. It's Cirrus. I
18 think, C-I-R-R-U-S, phonetically. We're working through a term
19 sheet. They're finalizing due diligence. We do have a term
20 sheet of \$170 million, which would be sufficient to refinance
21 the existing senior lender, which is owed about \$154 million,
22 \$156 million. In that neighborhood. And provide additional
23 liquidity for the hotel. We also received that term sheet, I
24 guess, late last week. My memory is Thursday or Friday on that.
25 We did circulate that to the senior lender on the hotel side.

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1 Those are some of the issues that they discuss with us in terms
2 of benchmarks and so forth under cash collateral issues as well.

3 Over the last ten days, I think there's been
4 tremendous progress in terms of moving towards a DIP financing.
5 And I do say that without a commitment, it's not definitive, but
6 I think it looks positive, finalizing with the union on an MOU,
7 and hopefully, finalizing our agreements with the senior lender
8 on consensual use of cash collateral with lockbox arrangements
9 to remain in place.

10 THE COURT: And so, is it fair to say you do not
11 anticipate a priming fight in connection with the DIP?

12 MR. NASH: No, I don't. The whole goal of the DIP is
13 to refinance the senior lender.

14 THE COURT: Okay. All right. And I don't want to get
15 into the weeds too much, but the takeout of the senior lender
16 would not occur immediately; that's why you're asking for cash
17 collateral?

18 MR. NASH: Yes. Yes. It's targeted to happen,
19 assuming due diligence is completed, in September.

20 THE COURT: In September. Okay. And we're actually
21 in August now, aren't we?

22 MR. NASH: Yes.

23 THE COURT: Okay. All right. Thank you, Mr. Nash.
24 If there's nothing more that you want to add, let me open up the
25 floor to other parties, starting with Mr. Strickon, if he wants

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1 to speak.

2 MR. STRICKON: Do you want me to speak on the status
3 conference or get right to my motion?

4 THE COURT: No, no, no. We're still on the status
5 conference.

6 MR. STRICKON: Oh, I have nothing to add on the status
7 conference. I'll cover all the points I wish to raise when we
8 have our discussion on the motion.

9 THE COURT: I appreciate that. Is there anybody else
10 who would like to be heard as part of the status conference?

11 MR. PETRICK: Good morning, Your Honor. It's Gregory
12 Petrick of Cadwalader, Wickersham Taft on behalf of OWS BCA
13 Funding, LLC. OWS is the senior secured lender to the hotel.
14 We are not directly involved in today's dispute and don't want
15 to take much of Your Honor's time. We did want to introduce
16 ourselves. We have just recently, last weekend, saw the term
17 sheet. We are analyzing it. We're also analyzing the potential
18 filing of the hotel and considering all of our options. I think
19 most significantly, Your Honor, as Mr. Nash has indicated, we
20 are in active negotiations for use of cash collateral, if there
21 is a filing. You know, paramount to us and all parties is to
22 maintain the condition of the hotel, allow it to continue to
23 operate, and we are hopeful that we will be able to reach a
24 consensual agreement with the debtors on that point. And we
25 hope to do that in short order.

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1 We are the largest creditor in the case by some
2 distance, so we have an interest in today's hearing, but you'll
3 hear more from us when and if the hotel files. Thank you, Your
4 Honor.

5 THE COURT: Okay. Thank you, Mr. Petrick. Don't go
6 away because it's conceivable that I might want to get your
7 input in connection with the lift-stay motion.

8 MR. PETRICK: Very well. Of course, Your Honor.

9 THE COURT: Okay. Would anybody else like to be
10 heard, again, on the status conference, not the motion.

11 MR. MARKOWITZ: Yes, Your Honor. Scott Markowitz,
12 Tarter Krinsky Drogin. Good morning. We also have Deborah
13 Bernstein from my office. And we also have a summer law clerk
14 listening in too. Similar to the prior counsel, the senior
15 lender on the fee property, we represent the Garment Center
16 Synagogue, which was granted a 99 year lease, \$1 a year lease,
17 on the property owned by the fee debtor. We're just observing
18 today. We have a great interest there because of that. You may
19 have seen a reference to it in the papers, but I just want to
20 let you know that we're observing and that we have a great
21 interest ultimately if the fee owner does file chapter 11.

22 THE COURT: Understood. Okay. Thank you Mr.
23 Markowitz. Anybody else? Mr. Masumoto, no comments?

24 MR. MASUMOTO: Good morning, Your Honor, Brian
25 Masumoto, with the Office of the United States Trustee. Your

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1 Honor, I'm monitoring this case. I was advised of a potential
2 filing, so some of the normal things expected of a debtor have
3 not occurred. Obviously, there were no first day orders, and in
4 fact, Your Honor, we did not solicit for a committee in
5 anticipation of a subsequent filing with a significant number of
6 creditors. So, this has been somewhat of an unusual
7 circumstance, and so, we're attempting to monitor the
8 circumstance of this case, as well as the potential filing.

9 THE COURT: Okay. And I just want to make sure I
10 understood what you said. When you said multiple creditors,
11 you're referring to the hotel, not to the current debtor?

12 MR. MASUMOTO: That's correct. As far as I know, the
13 debtor only indicated a secured creditor in its filings. And
14 although the claims register shows two claims that were filed,
15 they appear to have been claims that may be asserted against the
16 hotel. It's not clear that somehow the debtor may have
17 guaranteed those claims. And Con Edison was one of the
18 creditors, and then a small supplier of goods, which, again, did
19 not seem typical of the debtor. So, again, those creditors that
20 filed on the claims register may be creditors of the hotel as
21 opposed to the debtor itself, unless there's some sort of
22 guarantee by the debtor.

23 THE COURT: Right. Okay. Thank you, Mr. Masumoto.
24 So, I'm guessing that we've now completed the list of people who
25 want to be heard on the status conference. But let me pause for

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1 a second in case anybody else wants to weigh in. Okay. Hearing
2 nobody, let's turn to the left stay motion. And let me make a
3 couple of preliminary comments at the outset.

4 As one of the parties, I think the debtor, pointed out
5 in its papers, under the local rules, particularly 9014-2,
6 today's hearing is not an evidentiary hearing. But it may or
7 may not be a preliminary hearing. It could conceivably be a
8 final hearing. That will turn on whether I conclude at the end
9 of today's argument that evidence is needed to rule on the
10 motion. If it is, then today's hearing will become a
11 preliminary hearing, and we'll schedule a final hearing,
12 consistent with Code § 362(e). And that's something that we're
13 potentially going to need to talk about the timing for, because
14 the 30-day clock under (e) runs out a week from tomorrow. It
15 runs out Friday the 11th. And so, if we do need evidence, then
16 we may have to hold the hearing as soon as next Friday, unless
17 either I make a finding that's needed to extend it or the lender
18 consents to extend it. But we can get into that later.

19 Let me make one other preliminary comment. Mr.
20 Strickon, this is directed at you.

21 MR. STRICKON: Yes, Your Honor?

22 THE COURT: You did a fine job in your motion of
23 addressing the facts. I found your factual presentation very
24 careful and helpful. Obviously, I'm not making any factual
25 findings just yet, but I was surprised, frankly, that you

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1 essentially didn't address the law. You quoted 362(d)(1) and
2 (2), and in a paragraph each, you marshalled the facts
3 supporting your position that each of those subsections warrants
4 a lift-stay order, but you didn't cite a single case. And this
5 is not a case where there's no relevant case law. So, I'm
6 feeling a little bit frustrated by that.

7 MR. STRICKON: Well, Your Honor, each case is unique.
8 The facts in each case are unique, so citing other cases for
9 factual matter as to the operation of the hotel really are not
10 going to give the court very much guidance. The question here
11 is, this is a single asset case, a single creditor case, and as
12 Your Honor noted, the law is quite clear on how these cases are
13 generally handled in the Second Circuit. Plus there was urgency
14 in getting the motion filed.

15 THE COURT: But let me ask you, I assume you saw the
16 order that I yesterday.

17 MR. STRICKON: Yes.

18 THE COURT: And I guess my threshold question to you
19 is, are you arguing, because I think you could, that under the
20 Pleasant Point factors that the Second Circuit has adopted, that
21 I should apply those factors and that that would warrant a
22 lifting of the stay?

23 MR. STRICKON: Yes, Your Honor. One thing I wanted to
24 clarify is, the Pleasant Point case ended up in a dismissal of
25 the chapter 11 case, and --

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1 THE COURT: I realize, but if I can dismiss, I can
2 also lift the stay.

3 MR. STRICKON: Well, we don't want the case dismissed.
4 And after practicing in this area for 50 years, I've discovered
5 that there are reasons that you don't want the case dismissed.
6 And that is because the court could dismiss the case, the
7 secured lender could go through the burden of re-advertising and
8 remarketing the property, and then a day before the sale takes
9 place, the debtor could file again.

10 THE COURT: No, no, but hang on. I could dismiss with
11 prejudice, right?

12 MR. STRICKON: I'm not sure, Your Honor. I think in a
13 subsequent filing yes, but I think in an initial filing, the
14 best course to follow is to terminate the stay, keep the case
15 active, and then once the UCC disposition is completed, the
16 debtor is free to do with the case what it wants to. At that
17 point, the case could easily be dismissed as being moot.

18 THE COURT: I see. So, in other words, you want me to
19 lift the stay and essentially hold in abeyance any potential
20 dismissal until you've affected your foreclosure?

21 MR. STRICKON: Yes, Your Honor. That's exactly the
22 point.

23 THE COURT: But let me ask you. I appreciate your
24 candor in sharing with me what sounds like a little bit of a
25 dilemma you were wrestling with. And it sounds to me like

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1 you're sort of saying, I didn't argue Pleasant Point because if
2 I did, the judge might dismiss the case. Now, that I have
3 identified Pleasant Point, and I'm looking at it, and frankly,
4 it looks like it's potentially applicable here, what do you want
5 me to do about that?

6 MR. STRICKON: Well, I want you to apply the criteria
7 of the Pleasant Point case as cause for granting relief from the
8 stay.

9 THE COURT: Okay. So, you could have argued that in
10 your paper.

11 MR. STRICKON: Absolutely, Your Honor.

12 THE COURT: And part of the problem that I now have
13 because you didn't -- you know, Mr. Nash may say to me, judge, I
14 want to be able to put in a brief responding to the Pleasant
15 Point factors. And frankly, if he says that, I think he's
16 entitled to do that. What are your thoughts on that?

17 MR. STRICKON: Your Honor, the Pleasant Point factors,
18 as will be demonstrated, the Pleasant Point case pointed out
19 eight factors as being grounds for, in that case, a dismissal of
20 the case, which we argue is grounds for granting relief from the
21 stay. In this case, this debtor has violated every one of those
22 eight factors, and there's no dispute that the debtor has
23 breached eight of those itemized factors in the Pleasant Point
24 case. So, I'm not sure anything is going to be served by
25 putting in any reply papers or sur-reply papers when these are

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1 objective tests that the debtor is not disputing.

2 THE COURT: Well, you may be right, but just as a
3 matter of due process, your adversary has not really been given
4 -- take out the word really, has not been given adequate notice.
5 He's been given less than 24-hours notice that I might be ruling
6 on that ground.

7 MR. STRICKON: And you indicated that the parties
8 should be prepared to address those issues at the hearing.

9 THE COURT: Okay. Look, I didn't get to the end --

10 MR. STRICKON: I'm ready to address those issues, and
11 I assume that Mr. Nash is likewise ready to address those issues
12 also.

13 THE COURT: Well, I do, too. On the other hand, I
14 don't think it's the end of the world, from your standpoint, if
15 I were to allow Mr. Nash to put in a supplemental brief. It's
16 not going to derail the proceedings. I like to move swiftly, as
17 a general matter, and I plan to do that here, you'll be glad to
18 hear.

19 MR. STRICKON: Okay.

20 THE COURT: Okay. Let's turn to the substance of the
21 Pleasant Point factors. So, I don't think I need you to walk me
22 through each one and explain why it applies. That seems
23 straightforward. I obviously want to hear from Mr. Nash if he
24 disagrees that they apply. But the issue I'd like your help
25 with is, there's one factor, in particular, that strikes me as

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1 possibly problematic from your standpoint, and that is, single
2 asset debtor. I mean, strictly speaking, this is a single asset
3 debtor. Its only asset is the equity interest it holds in the
4 hotel. At least that seems to be the case. My question is,
5 assume hypothetically that the hotel had filed yesterday. I
6 mean, it may file tomorrow. The timing may complicate things a
7 little bit. But let's just try to cut to the heart of this.
8 Assume that we now have a multi-debtor case, a two debtor case,
9 the hotel and this debtor. Is it still appropriate in that
10 circumstance for me to dismiss on Pleasant Point grounds?

11 MR. STRICKON: Yes, Your Honor.

12 THE COURT: Tell me why.

13 MR. STRICKON: Because we believe the cases are
14 unrelated. While the debtor in this case owns the equity
15 interest in the hotel, change in ownership of the equity
16 interest is not going to have an impact on the bankruptcy filing
17 of the hotel owner other than putting a new indirect owner in
18 place that could possibly resolve all of the operational issues
19 of the hotel a lot better than this debtor has over the past
20 year. And that's really the objective here, is to oust the
21 present owners of the hotel and to put in a new owner that can
22 deal with the plethora of problems that the current owners have
23 created at the hotel level.

24 THE COURT: I get that point. You made that point
25 quite effectively in your papers. I guess my question is, and

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1 obviously this is a question for Mr. Nash as well, I'm looking
2 in from the outside, and I don't know, until I learn from you
3 and Mr. Nash, is it possible that lifting the stay and allowing
4 you to foreclose on the equity interest, changing the ownership
5 interest of, is it possible that that might trigger defaults
6 under important contracts at the hotel?

7 MR. STRICKON: Is that question directed to me, Your
8 Honor, or to Mr. Nash?

9 THE COURT: It is. Mr. Nash gets to think about it,
10 but he'll get to speak later.

11 MR. STRICKON: Okay. I can answer that question, and
12 the answer is no.

13 THE COURT: Okay. And I guess if the answer is no,
14 then maybe there's not much more for you to say about it. Okay.

15 MR. STRICKON: Just for your honest edification, the
16 senior mortgage loan at the hotel level is the subject of an
17 intercreditor agreement between our clients and the lender, One
18 Williams Street, and it governs a possibility that there would
19 be a change in ownership. But as far as we understand, any of
20 the other contractual relationships with the food and beverage
21 operator, the hotel manager, are not triggered, defaulted, or
22 impacted as a result of a change in ownership.

23 THE COURT: So, this agreement between your client and
24 the senior lender, would a change in ownership trigger a default
25 from the standpoint of the senior lender?

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1 MR. STRICKON: Not in and of itself.

2 THE COURT: Can you explain?

3 MR. STRICKON: Well, it doesn't trigger it, but there
4 are certain obligations that the lenders to this debtor have to
5 the senior lender, certain cure rights, certain buyout rights.
6 There are numerous intercreditor issues that are dealt with, but
7 the mere change in ownership will not -- I mean, the senior loan
8 is already in default. The mortgage loan is already in default.
9 So, if you're saying, will a change in ownership create a
10 default under the mortgage, the answer is it's already in
11 default. So, it's really academic.

12 THE COURT: Let me just push back on that a little bit
13 or follow up on that a little bit. So, I appreciate it'll have
14 consequences as between you and the senior lender, intercreditor
15 consequences. Will it have consequences for the hotel?

16 MR. STRICKON: No.

17 THE COURT: Okay.

18 MR. STRICKON: Nothing more than has already been
19 created.

20 THE COURT: Okay.

21 MR. STRICKON: So, the point is that the senior
22 mortgage loan is in default and hypothetically, the senior
23 lender could commence a mortgage foreclosure action if it chose
24 to do so.

25 THE COURT: Right. Understood. All right. So, let

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1 me let you continue with your argument.

2 MR. STRICKON: Okay. I'll commence, Your Honor. As I
3 said, we represent the secured lender to the debtor. The debtor
4 is a mezzanine borrowing entity, whose only creditor is the
5 secured party, and whose only asset is its membership interest
6 in an entity called 560 Seventh Avenue Owner Primary, LLC. So,
7 for ease of reference, we'll refer to Primary as the owner and
8 operator of the hotel and Secondary as the debtor in this case.

9 The debtor in this case is in turn owned by another
10 entity, which is a junior mezzanine borrowing entity. And that
11 entity in turn is owned directly or indirectly by three
12 individuals. One, Sharif al Gamal, Andrew Weiss and Chip Weiss.
13 As you now fully understand, Primary is the owner of the hotel.
14 Primary, as an operating entity, is managed by Soho Properties,
15 which is an affiliate of this debtor. Margaritaville
16 Enterprises is the franchisor to the hotel. The hotel is
17 currently managed by an entity called DHG TSQ, LLC, which we
18 refer to as Dream.

19 THE COURT: Mr. Strickon, sorry. You're having a
20 little bit of an audio problem.

21 MR. STRICKON: Is that better, Your Honor?

22 THE COURT: Might be.

23 MR. STRICKON: Okay.

24 THE COURT: It wasn't a terrible problem. It's just
25 that you're a little bit fuzzy.

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1 MR. STRICKON: Oh, okay. I'll try to get closer to
2 the microphone.

3 THE COURT: Okay. Yeah, that's better.

4 MR. STRICKON: Okay. As I said, Primary, the hotel
5 operating entity, is managed by Soho Properties, which is an
6 affiliate of this debtor. The franchisor is a company called
7 Margaritaville Enterprises. The hotel itself is managed by a
8 hotel management company called DHG TSQ, LLC, which we will
9 refer to as Dream. The Margaritaville --

10 THE COURT: Can I just jump in, and ask a question?

11 MR. STRICKON: Right.

12 THE COURT: I was following you fully until you
13 mentioned -- where I lost you is, there's a management company?
14 But before that, you said the hotel is managed by an affiliate
15 of the owner?

16 MR. STRICKON: Yes. The hotel consists of a hotel
17 operation and a restaurant and bar. The debtor, we'll call
18 Primary, is managed by Soho Properties. That's an affiliate of
19 this debtor. But the hotel only entity enters into a hotel
20 management agreement with a professional management company.

21 THE COURT: Okay.

22 MR. STRICKON: So, during the course of my
23 presentation, when we refer to mismanagement, we're not talking
24 about the hotel manager per se. The hotel manager only does
25 what it's allowed to do by the owner of the hotel. When we talk

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1 about mismanagement, and judgments, and problems that are
2 created, these are not created by the Dream Hotels, as the hotel
3 manager, but by the debtor itself. Margaritaville, the
4 restaurant and bar are separately owned and operated by a food
5 and beverage lessee. The loan from our secured party, as you
6 know, is secured by the pledge of the membership interest, which
7 is the aim -- I'm sorry to keep interrupting, but the fuzziness
8 is getting worse. It now sounds like you're almost underwater.

9 MR. STRICKON: All right. Is that better, Your Honor?
10 Yeah, I'm sorry.

11 THE COURT: I don't think getting closer is
12 necessarily the problem. Why don't you try moving back?

13 MR. STRICKON: Okay. Is that a little bit -- maybe
14 that's the problem. I'm not that technically savvy. I'm sorry.

15 THE COURT: Yeah, it's not perfect. So, I would
16 suggest when the hearing is over, you see if you can do
17 something, but I guess you should keep going .

18 MR. STRICKON: Yeah, okay. Behind the loan of the
19 secured party is a junior mezzanine loan to the entity which
20 owns the debtor. And that's a loan which currently is claimed
21 to be owed \$11,667,000. So, behind our clients \$85 million
22 senior mezzanine loan, there's an eleven plus million dollars
23 junior mezzanine loan. The history is that the loan to our
24 clients first went into payment default on March 9th. The day
25 after it went into payment default, a notice of default was

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1 issued to the borrower on March 10th. The payment defaults
2 continued and other defaults started to occur which resulted in
3 the notification of disposition of collateral being issued on
4 April 10th, setting a sale date for July 10th, which was three
5 months later. Payment defaults continued, additional defaults
6 occurred, and there was heavy advertising and marketing by
7 Newmark of the UCC disposition.

8 On June 28th, the debtor filed an action in the Supreme
9 Court seeking a temporary restraining order and a preliminary
10 injunction to prevent the UCC disposition from proceeding. The
11 court held an initial hearing on June 29th, at which time the
12 motion for the temporary restraining order was denied. A full
13 hearing was set for July 7th, and at that full hearing the motion
14 for the TRO and the preliminary injunction were also denied.
15 That was on July 7th. On July 9th, at 7:05 p.m., the day before
16 the UCC disposition was to take place, the debtor filed its
17 chapter 11 petition.

18 Now, a lot of what I'm going to discuss does affect or
19 relate to the operation of the hotel itself. And the only
20 purpose of focusing on the operation of the hotel is that it
21 affects the value of the collateral and supports the point that
22 our collateral is in jeopardy and is at risk of losing value.
23 The total debt stack of primary, secondary, and the junior
24 mezzanine entity is some \$400 million, which is far in excess of
25 any current or future value that the debtor has presented. The

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1 proposed DIP financing for the hotel, which the debtor referred
2 to, calls for \$170,000,000 of proceeds and that will require \$27
3 million of payments over the next twelve month period, including
4 debt service to the loan and the junior mezzanine loan.

5 Interest accruals on the loans would put the hotel under another
6 \$19 million worth of debt since the hotel is projected only to
7 generate \$13 million of net income, according to the debtor's
8 appraiser.

9 Combined debt service of \$4 million per month during
10 any restructuring period when the hotel is expected to generate
11 less than \$2 million per month will require significant capital
12 infusions. And absent any capital infusions which are projected
13 to be needed between \$30 million and \$50 million to keep the
14 property afloat, the unpaid indebtedness will escalate to a
15 point where our secured party lender's equity position could
16 potentially be wiped out completely. The hotel has serious
17 issues in and of itself.

18 The mismanagement has resulted in numerous defaults
19 and judgments against the hotel which puts the franchise and
20 food and beverage leases in jeopardy. It is believed, and
21 again, we just are suggesting, that several millions of dollars
22 have actually been diverted from the project. Contracts have
23 been amended to the detriment of the property without obtaining
24 approval of the lenders and the debtor made affirmative efforts
25 to conceal or obfuscate these amendments so that the lenders

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1 would not disclose them. Debt service under the debtor's
2 proposed restructuring plan far outweigh the property's cash
3 flows, sinking the hotel deeper and deeper in debt. Our client,
4 the secured party has already been compelled to make millions of
5 dollars of protective advances in order to keep critical
6 stakeholders paid and the senior loan in compliance. Over a
7 monthly basis with the term of the loan, the debtor was
8 reporting to all of its lenders that payments to vendors had
9 been made, but the debtor at the same time was diverting funds.
10 We believe that this fraudulent activity siphoned off millions
11 of dollars from the hotel to the detriment of the lenders.

12 Now, we're not suggesting that the debtor's appraiser
13 did not proceed in good faith, but the appraisal that was
14 presented to the court was grossly exaggerated, and it doesn't
15 constitute a full qualified appraiser based on information that
16 the debtor deliberately withheld from its appraiser. Firstly,
17 our position is that the appraisal of what the hotel is worth is
18 what it's worth today and not what it potentially could be worth
19 two years from now. Significant facts were withheld from the
20 appraiser. The first was that the inevitable unionization of
21 the hotel would impact the appraised values by at least 15 to 20
22 percent. The appraiser also assumed that the space that was
23 intended for the Garment Center Congregation could actually be
24 rented out as commercial space. The financials that were
25 provided to the appraiser differ significantly from the

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1 financials that were provided to our client.

2 THE COURT: I'm sorry to interrupt, but let me ask you
3 a few questions about the unionization and its relation to the
4 appraisal.

5 MR. STRICKON: Yes.

6 THE COURT: So, I get the point that the -- I'm going
7 to call it an appraisal, but I realize it's something shorter
8 than an appraisal.

9 MR. STRICKON: Yeah, we keep calling it appraisal, but
10 it's really an evaluation more than a full --

11 THE COURT: Evaluation, yeah. I get the point that
12 the valuation that the debtors annexed to their papers did not
13 take into account the unionization. And I saw that the LW
14 Hospitality subsequently circulated a letter saying that, in its
15 view, the unionization would reduce its evaluation by 15 or 20
16 percent. My question is, what's your basis for saying this was
17 deliberately withheld by the debtor from LW Hospitality?

18 MR. STRICKON: Because at the time that the appraiser,
19 the digits evaluation, the employees had already taken a vote
20 and approved the unionization of the hotel.

21 THE COURT: And what can I look at to confirm that LW
22 didn't know about this?

23 MR. STRICKON: Because it's not mentioned in their
24 appraisal, and they subsequently confirmed that it was not
25 mentioned or considered in their appraisal.

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1 THE COURT: Okay. I have looked at the valuation. I
2 haven't scrubbed it. I'm sure I haven't read it nearly as
3 carefully as you have. Are you telling me that it does not say
4 a word anywhere about unionization or potential unionization?

5 MR. STRICKON: That's correct, Your Honor.

6 THE COURT: Okay. And one other question. I have
7 some familiarity with appraisals of hotels, actually, but what
8 you could help with is, can you tell me, what are the main ways
9 in which this valuation falls short of a full-fledged appraisal?

10 MR. STRICKON: Well, the answer is, it doesn't purport
11 to be a full-fledged appraisal.

12 THE COURT: I know. I'm trying to flush that out a
13 little bit.

14 MR. STRICKON: Yeah, I think that full-fledged
15 appraisals go into much more detail as to comparable sales, room
16 revenues, things of that sort, which this did not do on a full-
17 fledged basis. I'll call this something that we commonly call
18 desk appraisal, you know, based upon information that's provided
19 to the appraiser, and then the appraiser does an evaluation.
20 Whereas, the appraiser actually goes out itself and gathers its
21 information independently, and then comes to a conclusion as to
22 value.

23 THE COURT: Okay. I mean, the funny thing is, the
24 appraisal, once it's been adjusted to account for the
25 unionization, seems like it might actually help your position.

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1 MR. STRICKON: No, no. If the value of the hotel is
2 15 to 20 percent less than the appraiser says in its
3 conclusions, it clearly shows that there is no equity in this
4 property.

5 THE COURT: That's my point. That I'm not sure it
6 helps you to bash the valuation, the valuation actually seems to
7 come out your way.

8 MR. STRICKON: Yeah, as I say, we're not criticizing
9 the appraiser or its conclusions. We also need to point out
10 that the appraiser reported as one of the considerations of
11 value the revenue from resort fees that it charged to customers
12 that stay at the hotel, but failed to take into account that 40
13 percent of these resort fees get paid over to the food and
14 beverage operator, so that the income is grossly exaggerated
15 also. The point is, that the appraisal, even taken at face
16 value, without all of these other considerations, show that the
17 property is underwater.

18 THE COURT: Yeah, I get it. And I have one or two
19 more questions, because I think the appraisal potentially helps
20 you in several ways. One is the value point. Another point
21 might be supporting your position that there's a pattern of
22 misbehavior by the debtor.

23 MR. STRICKON: Yes, Your Honor.

24 THE COURT: A pattern of deception.

25 MR. STRICKON: It also would go to show the likelihood

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1 that even if the hotel did file a bankruptcy case, the
2 assumptions that were made on a going forward basis would not
3 support the debtor's proposed plan of reorganization.

4 THE COURT: Okay. Well, the debtor's proposed plan is
5 not before me, and I don't want to hear you tell me about what's
6 been shown to you as a matter of negotiations.

7 MR. STRICKON: Okay. That's fine. But --

8 THE COURT: Hang on, I have more questions.

9 MR. STRICKON: Sorry, Your Honor.

10 THE COURT: I'd like to understand better one of the
11 points you made in your papers, and you reiterated a moment ago,
12 and that is, that if you look at the numbers that went into the
13 appraisal and compare them to the numbers that were given to
14 your client, they're different in a number of significant ways.
15 Now, you're asking me to conclude that there was deliberate
16 obfuscation going on by the debtor. Help me connect the dots
17 there.

18 MR. STRICKON: What we're saying, and as I'll
19 elaborate, when I go over the major obligations that the hotel
20 has incurred as a result of the mismanagement, the point is, we
21 don't expect you to make a final ruling on whether or not this
22 debtor did or did not make any misrepresentations or did
23 deliberately inflate the revenue numbers in order to achieve a
24 goal, we're just saying that these are just factors that should
25 be taken into account by the court in determining whether

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1 there's any reason not to terminate the stay here because the
2 hotel itself, under the continued management of this debtor, is
3 viable. We're saying that, you know, it's --

4 THE COURT: Hang on, I'm not sure I follow you there.
5 It seems to me you're saying or maybe should be saying that
6 there's a whole bunch of things that I should consider that
7 would support a bad-faith dismissal.

8 MR. STRICKON: Yes.

9 THE COURT: One of them is a pattern of deception.
10 And obviously, Mr. Nash, I want to hear your rebuttal to that
11 because I'm not assuming that it's true, but it's certainly one
12 of your arguments, Mr. Strickon. And it seems to me, if I agree
13 with you on that, you want me to make a factual finding to that
14 effect and conclude that those facts are part of the basis for a
15 bad faith lift-stay ruling.

16 MR. STRICKON: No. The only point in making those
17 statements is to show that -- the debtor has come forth saying
18 that the hotel owning entity is viable, we're working on a
19 restructuring, we're taking care of all of our problems. You
20 know, we've heard this now for a year already. And the only
21 point we are making here is that all of this is just smoke and
22 mirrors. That we don't expect, with the information that Your
23 Honor has before him, that you can make a factual determination
24 that these are true or not true.

25 THE COURT: Well, I could if we have an evidentiary

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1 hearing.

2 MR. STRICKON: Well, that's true, yes, we could have
3 an evidentiary hearing, but we don't believe that an evidentiary
4 hearing is necessary.

5 THE COURT: All right.

6 MR. STRICKON: Because we're dealing with a mezzanine
7 entity. As I said earlier on, it's a one debtor, one creditor
8 case. It was the debtor itself that's making all these
9 arguments that, basically, we've got a hotel entity, we're going
10 to file it, we're going to restructure it, we're going to
11 reorganize it. But they haven't addressed the fact as to how
12 they're going to deal with the debt at the mezzanine borrowing
13 entity level. None of what they --

14 THE COURT: Those are all things on which I might find
15 they're entitled to their day in court, that is, an evidentiary
16 hearing.

17 MR. STRICKON: Yes. Yes. And we're entitled to say,
18 it's all a bunch of wishes and hopes.

19 THE COURT: So, help me understand. I'm well aware
20 that there's a number of different paths I could go down. One
21 is, I could say, there are facts here, and I want to have a
22 trial, and we could schedule a trial. But you're saying to me,
23 I shouldn't do that. You're saying to me I should rule in your
24 favor today. I just want to make sure I'm not confused.
25 Because the way I think of it. If I were to do that, the

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1 simplest basis for me to do that would be the Pleasant Point
2 factors. Do you agree with that, or do you have an alternative
3 ground you'd like me to lift stay on today?

4 MR. STRICKON: We believe that all eight of the
5 Pleasant Point factors have been met, clearly met.

6 THE COURT: Okay. So, you're now all in on Pleasant
7 Point?

8 MR. STRICKON: Yeah. As I said, the only reason that
9 we've raised all these factual issues is because that's the
10 position the debtor has taken, that we have a debtor entity here
11 that owns another entity that owns a hotel, and they're arguing
12 about the future reorganization of the hotel, which, quite
13 frankly, we think is totally irrelevant to the issues before the
14 court on the mezzanine borrowing level.

15 THE COURT: Okay. Okay. Understood. So, I've been
16 cutting you off in a big way.

17 MR. STRICKON: That's okay. That's your prerogative.

18 THE COURT: Why don't you continue?

19 MR. STRICKON: Yeah. Just to add fuel to the fire,
20 the hotel has substantial arrears to its franchisor. It has
21 substantial arrears to its food and beverage lessee. It is the
22 subject of a judgment that was entered by the hotel management
23 company, the Dream Company, for over \$3 million. And that's a
24 judgment that was based on an arbitration award. And the
25 likelihood of taking an appeal and being successful on appeal is

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1 practically nil. There's a mechanic's lien that was filed
2 against the hotel for \$2.8 million. The Garment Center
3 Congregation is involved in litigation that has now been going
4 on for a number of years based upon the hotel owning entity's
5 breach of its agreement to provide substitute space and to
6 reconstruct a synagogue in the hotel space. The union has
7 assessed substantial penalties against Primary for failing to
8 report certain mandatory inventory information that they were
9 required to provide. And there apparently are past due
10 aggregate payables of some 5 million to \$7 million in total.
11 So, the debtor coming in and saying that our subsidiary company
12 is ready to file, and we've got a DIP loan in place and
13 everything is going to be rosy, is far from the truth.

14 As we submitted in our papers, it's clear that the
15 debtor has only one asset. The debtor filed its schedules, and
16 it shows one asset being its membership interest in the hotel
17 entity. The debtor apparently has no other unsecured creditors.
18 While Mr. Masumoto indicated that two creditors filed claims, we
19 reviewed the claims, and it appears they filed against their own
20 company. The debtor only has one asset, which is the subject of
21 the UCC disposition. The disposition was instituted as a result
22 of defaults that have occurred, and none of those defaults have
23 ever been cured. It's just a two party dispute that could be
24 resolved between the debtor, and its secured creditor. If there
25 are any disputes regarding the UCC disposition, they could

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1 easily be resolved in a state court. The timing of the filing
2 is also critical. This debtor filed, I think, eight hours
3 before the UCC disposition was to take place. There is
4 absolutely no cash flow, and the debtor has no so employees.

5 THE COURT: Wait. Let me jump in on no cash flow.
6 What I interpret that to mean is, no cash flow, other than any
7 money that gets up streamed from the hotel to pay off, for
8 example, the lender.

9 MR. STRICKON: Yeah, that's correct. There is no cash
10 flow because the revenues of the hotel are not sufficient to
11 meet all of the hotel operating entities' creditors. So,
12 there's no cash flow that's ever been upstream to our borrower.

13 MR. STRICKON: Oh. Okay, now, I'm confused, because
14 until a certain point in time, a few months ago, I think. This
15 spring maybe? This lender was being paid, wasn't it?

16 MR. STRICKON: No.

17 THE COURT: I thought you said the first payment
18 default occurred sometime earlier this year.

19 MR. STRICKON: Yes. The way the loan was structured
20 is accrued interest was being picked, you know, paid in kind.

21 THE COURT: Okay. So, the mezz lender has never
22 received any payments.

23 MR. STRICKON: That's correct, Your Honor.

24 THE COURT: So, everything was pick until?

25 MR. STRICKON: Until April. Okay. Just hang on, I

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1 want to write this down. Let me ask you to pause. Okay. So,
2 everything was pick until April.

3 MR. STRICKON: Yeah, that's my understanding, Your
4 Honor. Okay? I will certainly doublecheck with the client, but
5 my understanding is that the interest was being picked and that
6 the April payment was the first actual cash required payment.

7 THE COURT: Okay. I'm going to ask you, while Mr.
8 Nash is arguing, to see if one of your colleagues can --

9 MR. STRICKON: Yeah, I will do that, Your Honor.

10 THE COURT: -- confirm that. And just to follow up on
11 that point. Did you also say no cash has ever actually been up
12 streamed from the hotel to --

13 MR. STRICKON: I am in error. There were some
14 payments that were made.

15 THE COURT: Okay.

16 MR. STRICKON: Yes. I apologize for that. Okay?
17 There were payments that were made, but the payments stopped in
18 April.

19 THE COURT: So, just give me a little flesh on the
20 bones there. What payments were made?

21 MR. STRICKON: The April payment was the first
22 interest payment and nothing was paid going forward.

23 THE COURT: Sorry, but you just said four payments
24 were made.

25 MR. STRICKON: There were some payments made. I'll

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1 try to get you the exact date payments were made.

2 THE COURT: Okay. I want to be precise on this. So,
3 I want your help in laying out the facts precisely, because one
4 of the factors, if I wind up ruling on Pleasant Point is, has
5 there been any cash flow, and I want to make sure I have that
6 right.

7 MR. STRICKON: Okay. I'm waiting for a response, Your
8 Honor.

9 THE COURT: Well, you can hold it until, you know,
10 rebuttal.

11 MR. STRICKON: Okay. That's fine.

12 THE COURT: Okay.

13 MR. STRICKON: I just --

14 THE COURT: Because I didn't want to get a partial
15 response. I want to wait till you have a complete response.

16 MR. STRICKON: Yes.

17 THE COURT: Okay.

18 MR. STRICKON: The answer I got, Your Honor, is they
19 started making the payments in October of '22 and made payments
20 through March of '23. That was when the payments stopped.

21 THE COURT: Okay. All right. And so, there was cash
22 that was upstream during that period?

23 MR. STRICKON: Yeah, for approximately six months.

24 THE COURT: Okay. But I guess to square that with
25 Pleasant Point, you would say, there's no cash flow, other than

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1 this limited cash flow you just described.

2 MR. STRICKON: Yeah, there's no cash flow from that
3 point on. And based upon the debtor's own projections, it
4 doesn't appear that there would be any cash flow in the near
5 future.

6 THE COURT: Yeah, let's just pause on that because
7 that last point is heavily factual, right? You say, it doesn't
8 appear; the debtors are going to tell me, oh, no, it will
9 happen. I guess I'm wondering whether, as a legal matter, and
10 here's why I wish you had briefed Pleasant Point. One example
11 of why. As a legal matter, does it really matter? That is, the
12 Second Circuit has not said every single Pleasant Point factor
13 has to be satisfied. It seems to me like a totality of the
14 circumstances standard. And it seems to me like, potentially,
15 it's good enough from your standpoint, that the other factors
16 are met. And here, this is partially met, in the sense that,
17 there's no cash flow from sources other than the subsidiary, the
18 hotel. And even there, the amount of cash has been partial, has
19 been limited.

20 MR. STRICKON: Yeah, well, there are two reasons why
21 there's no cash flow. Number one, the projected cash flow is
22 insufficient to meet all of the hotel operator's existing and
23 ongoing expenses. And the second thing is because the cash is
24 all being trapped by the mortgagee.

25 THE COURT: Okay. But I mean, for whatever reason,

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1 there was cash during the six months you mentioned, and then the
2 spigot was turned off for some reason.

3 MR. STRICKON: Well, because of a variety of debts
4 that were remaining unpaid.

5 THE COURT: No, I realized, but basically, my point is
6 just the financial circumstances down at the hotel seemed to
7 have fluctuated somewhat over time.

8 MR. STRICKON: And our client had to pay money out of
9 pocket as protective advances because the hotel had insufficient
10 cash to meet critical obligations. Plus, the fact that right
11 now, the senior mortgage lender is requesting that approximately
12 \$10 million of reserves be restored. The senior mortgage lender
13 took \$10 million of reserves and applied in a reduction of its
14 mortgage because of default. But besides that, the senior
15 mortgage lender says, okay, we've applied the reserves, now you
16 have to restore the reserves.

17 THE COURT: Okay. Okay. All right. So, thank you.
18 I appreciate your answers to my questions.

19 MR. STRICKON: Thank you, Your Honor.

20 THE COURT: Did you have more?

21 MR. STRICKON: No, I think we've described the whole
22 situation here.

23 THE COURT: So, let me follow up on putting this into
24 a legal framework. You said to me, if I understood you
25 correctly, judge, you don't have to consider all the messy

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1 facts, the facts that might require a trial, because all you
2 have to look at is what's happening upstairs at the mezz level,
3 at the debtor level.

4 MR. STRICKON: Right.

5 THE COURT: And I get that. But then you say, but I'm
6 giving you all these messy facts sort of to preemptively rebut
7 what the debtor is going to say about how you've got to keep the
8 stay in place, or you'll tank the potential reorg at the hotel.

9 MR. STRICKON: Correct, Your Honor. Because we've
10 already fought this battle in a state court, so we know
11 exactly --

12 THE COURT: You don't have to repeat the argument, I
13 understand it.

14 MR. STRICKON: Sorry.

15 THE COURT: Here's my question. Don't you have a
16 simpler way of dealing with the messy facts? Because the messy
17 facts, frankly, if I have to decide them, they probably need a
18 trial. And I'm trying to think through whether I could rule
19 today. Don't you have a simpler answer to the messy facts? And
20 that is, maybe they'll reorganize at the hotel level, maybe they
21 won't. I don't care, and judge, you shouldn't care either,
22 because all you need to care about all, all I need to care about
23 is that letting you foreclose, lifting the stay and letting you
24 foreclose won't impair the hotel's ability to do that.

25 MR. STRICKON: And we said so much in our papers, that

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1 while we do address all these messy facts, we still believe that
2 our position is correct, that you only have to deal with this
3 debtor, and it's all totally irrelevant. But we can't sit back
4 and remain mute while all these allegations are being made about
5 the rosy future of the Margaritaville Hotel.

6 THE COURT: Understood. I do have a few more
7 questions for you.

8 MR. STRICKON: Surely.

9 THE COURT: One is, as a legal matter, do you bear the
10 burden on this motion of proving your liens? You know, I know
11 that at the end of the day, the debtor bears the ultimate burden
12 on everything other than the equity element of the (d)(2)
13 determination. But what I want to ask you now is prima facia
14 case, do you have to make out a prima facia case today that your
15 liens are valid?

16 MR. STRICKON: The answer is no, because the debtor
17 has never taken issue with the validity of the lien. If that
18 was an issue, it would have been raised in the state court
19 proceedings, and it has not been raised in this case. The
20 validity of the lien is acknowledged to be valid and
21 enforceable.

22 THE COURT: So, what could I point to support that, if
23 I agree with that.

24 MR. STRICKON: We can give you a copy of the several
25 hundred page pledge agreement. It's not several hundred pages,

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1 but --

2 THE COURT: No, no, that wouldn't answer it. The fact
3 that you have a pledge agreement doesn't prove that you've
4 perfected your lien.

5 MR. STRICKON: It's not an issue before the court.
6 The debtor has affirmatively acknowledged the validity of the
7 lender's lien.

8 THE COURT: But I'm asking you to point something that
9 I could look at to confirm that.

10 MR. STRICKON: As I say, we could file today documents
11 showing it. The document is merely a loan agreement and a
12 pledge agreement.

13 THE COURT: But I'm pushing back on that.

14 MR. STRICKON: I'm not sure what more the court would
15 need to prove that we have a valid lien and a valid claim.

16 THE COURT: There's lots of cases where a lender has a
17 loan agreement and a pledge agreement, but it turns out in the
18 bankruptcy that there are problems with its lien.

19 MR. STRICKON: Yeah. Where a debtor is challenging
20 it.

21 THE COURT: So, that's what I'm trying to get to the
22 bottom of. I think there may be a simple answer.

23 MR. STRICKON: The debtor has never challenged the
24 validity of the lien.

25 THE COURT: Okay. So, I mean, I'm trying to make this

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1 simple, Mr. Strickon, and I'm asking you to help me make it
2 simple. I'm thinking out loud now. I mean, maybe I could look
3 at the debtor's schedules.

4 MR. STRICKON: The debtor's schedules also acknowledge
5 that there's a lien. You're absolutely correct. The debtor
6 filed the schedules. The debtor shows a single asset, and it
7 shows the single liability secured by a pledge of the membership
8 interest. That's why we don't believe that the court needs to
9 go any further than that by the debtor's own acknowledgement and
10 its own schedules.

11 THE COURT: Okay. So, I'm going to give you a little
12 homework assignment, if you don't mind. While Mr. Nash is
13 arguing, confer with your colleagues, see if when you speak on
14 rebuttal, you can point me to anything else. Because, look, it
15 may be the schedules do it for you, and it may they don't. I'm
16 not looking at them this second. So, on rebuttal, if you come
17 up with anything more that I could look to, that would be simple
18 confirmation of your point, that would be helpful.

19 MR. STRICKON: Sure, Your Honor .

20 THE COURT: Okay. All right. Give me one second to
21 see if I have anything further. Am I right that for today's
22 purposes at least, you're not pressing your argument under
23 (d) (2) ?

24 MR. STRICKON: Well, we did set forth in our papers
25 that the property is not necessary for an effective

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1 reorganization because there's nothing to reorganize here.

2 THE COURT: I don't buy that. The question is, is
3 there a way the debtor could confirm a plan in this case, and
4 it's not obvious to me that the answer is no.

5 MR. STRICKON: The only way the debtor could confirm a
6 plan would be with the consent of our client, which our client
7 is not prepared to do. And the debtor, in its refinancing
8 proposal, says the only way that they could effectuate a
9 reorganization here is if our client agreed to take less than
10 it's owed.

11 THE COURT: Okay. So, you know what, I'll see what
12 Mr. Nash has to say on that. There may be issues you'll want to
13 address on rebuttal, but it seems to me this is an issue that I
14 don't need to get to today. It's probably impossible for me to
15 rule on the issue today. Among other things, I'd have to make a
16 ruling on whether the debtor has equity in the property, and
17 that may require a trial to make a finding on the value of the
18 property. But am I right from your perspective, I don't need to
19 rule on (d) (2)?

20 MR. STRICKON: That's correct.

21 THE COURT: Okay.

22 MR. STRICKON: Because you have sufficient grounds to
23 rule otherwise.

24 THE COURT: Yup. Okay. All right. Thank you, Mr.
25 Strickon.

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1 MR. STRICKON: Thank you.

2 THE COURT: Mr. Nash, your turn.

3 MR. NASH: Thank you. If I could, I want to take the
4 points in reverse order because I think we have a fundamental
5 dispute as to various items. In fact, most items, and the
6 notion that we haven't disputed the amount of the claim, the
7 perfection of the claim based upon the schedules, I think is
8 just incorrect. The schedules that were filed list the
9 mezzanine lender as an unliquidated and disputed creditor, both
10 blanks are checked off.

11 On page 33 of my response, I make the following
12 statement. I say the mezzanine lender has failed to meet its
13 burden. And the burden I'm talking about is the burdens that
14 the mezzanine lender has under 362. It provides no, I
15 underscore the word "no", actual proof of either the correct
16 amount of its claim, the validity of its pledge and security
17 interest, and most importantly, ignores entirely the need to
18 establish that the value of the membership interest is actually
19 declining in value. And I think there are three or four cases
20 that set the framework for this type of matter. I think it's
21 intensive factual matter in terms of both value of the hotel,
22 the interplay of the MOU on the value of the hotel, the amount
23 of the actual legitimate claim of the lender. The issues of
24 mismanagement are disputed. I think there's a conflating of the
25 fact that the hotel opened up in 2021 in a COVID related

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1 environment, had some growing pains into 2022 and early 2023,
2 which explains for certain debts and obligations that have
3 accrued. But if you look at the swing of the hotel, I think
4 it's very important.

5 If you look at the swing of the hotel, the hotel is on
6 an upward trend, and some objective data supports that. The
7 occupancy rates are now above 95 percent. The hotel is
8 generating between closely \$2.7 million in revenues. The senior
9 lender is holding outside of the reserves, which they paid down
10 on, I believe, July 13, another \$3.2 million. And if you look
11 at it in its entirety, the hotel, I think, is on an upward
12 swing. It has drawn the attraction of a potential DIP lender.
13 And a big part of their motion was, well, there's labor unrest
14 and there's fines and there's penalties, and we can't trust
15 management to rectify that situation. Well, management has
16 rectified that situation. There is an MOU that has been signed
17 which eliminates the labor unrest, eliminates any fines and
18 penalties, and I think the MOU is fair to the hotel. And I
19 think in the economic sense of it, I think it's a positive for
20 the hotel. It's not the deflation of value that the appraiser
21 may think it is or the valuation may think it is. There's no
22 basis for the assumption that it's an automatic 15 to 20 percent
23 reduction in value. In fact, I think I could put on evidence
24 that that's a general rule, if you become a union hotel, you
25 lose value, with the exception of Manhattan. And particularly,

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1 the exception of Times Square. Because every hotel in Times
2 Square is unionized.

3 THE COURT: But hang on, Mr. Nash, you really lost me
4 on that point, because isn't it true that LW Hospitality, your
5 valuation firm, put in a letter which is in the record, saying,
6 now that we're taking unionization into account, it knocks 15 to
7 20 percent off the value of the hotel?

8 MR. NASH: That letter does say that. I'm not
9 suggesting it doesn't.

10 THE COURT: And they're your experts, aren't they?

11 MR. NASH: Well, I think that they provided valuations
12 for both the lender and the debtor, because the letter is
13 addressed, my letter is addressed July 28th to the hotel. Their
14 letter is addressed August 1st to the mezzanine lender. And if
15 I'm looking at --

16 THE COURT: So, I get that. But you chose to rely on
17 them in a big way.

18 MR. NASH: I did, and I'm not saying I didn't. But if
19 you look at it, it's not a definitive statement. And I don't
20 know what the assumptions they used, but they said likely
21 result. It didn't say definitive result. They didn't show any
22 basis for why it would be an automatic 15 to 20 percent
23 reduction in value. And yes, I use this appraisal, but this
24 notion that it's a likely result, I don't think is supported by
25 any evidence in the midtown market. And I would like to test

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1 that, and I think I should have the opportunity to test that,
2 because that came in on reply.

3 There are a lot of things I would like to test. I
4 would like to test, and I would like to have the opportunity to
5 present evidence on this notion of general mismanagement. And
6 I'd like to put into context where we actually stand with the
7 franchise owner, Margaritaville. And you asked a very poignant
8 question, and I think you can't answer that question off the
9 cuff. Would a change in management affect any of the existing
10 contracts in terms of default? Well, Mr. Strickon didn't answer
11 whether or not, and I would have to look at it, whether or not
12 that would cause a default under the franchise agreement. And
13 there are payment arrears owed to Margaritaville, but there's no
14 notice of default and no notice of termination. Just like there
15 are disputes going back and forth between the hotel and the food
16 and beverage operator, but there's no notice of termination on
17 that. So, all of these issues are curable. All of these issues
18 can be fixed with negotiation. And I think when you look at it,
19 you can't take away from the fact that the papers here were
20 filed without any scintilla of any evidence, and they were filed
21 to throw dirt at the wall in terms of mismanagement, without
22 understanding each and every element of the growing pains of the
23 hotel, the issues that were really with the management company
24 Dream, where we really stand with the franchise holder,
25 Margaritaville. Where we really stand with the food and

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1 beverage operator. Where we really stand with the ability to
2 track new DIP financing. So, all of those issues, I think, are
3 fact intensive, and I would ask for an evidentiary hearing on
4 those issues because you cannot make an evaluation as to the
5 legitimacy of the filing, the long term and short term prospects
6 at a hotel without hearing actual positive evidence one way or
7 the other that gives you a clear record forward. Quite frankly,
8 I haven't seen a motion to lift a stay where they didn't even
9 put in their loan documents. They didn't put in an accounting
10 of how they go from 57 million principal to 87 million total.
11 There were payments made either through reserves or payments
12 from investors through March.

13 THE COURT: So, Mr. Nash, let me try to cut to the
14 chase here, because I agree with a lot of what you've said, but
15 let me try to sharpen the focus. Here's what I agree with you
16 on. I agree that a lot of the issues you mentioned are factual.
17 And if I need to decide them in order to decide this motion,
18 then we need a trial. No question. Valuation? You've got to
19 have a trial, right? Arguments about mismanagement, deception
20 by management, you've got to have a trial. I'm not deciding
21 those without a trial. Okay? But now let me try to hone in on,
22 are the issues in fact simpler? Do I really need to rule on
23 those issues? Could I grant the motion without getting to those
24 issues? And what I'd like to ask you to do is walk through with
25 me the seven or eight factors, eight factors that the Second

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1 Circuit recites in the -- do you have the CTC case handy?

2 MR. NASH: I don't, but I kind of know the factors,
3 and I'd be more than happy to walk through with those factors.

4 THE COURT: Okay.

5 MR. NASH: And I also like the opportunity to brief
6 them in detail.

7 THE COURT: Okay.

8 MR. NASH: Because most CT type motions, and I'm just
9 going to note, and I saw what Your Honor entered yesterday
10 afternoon, so I'm not caught by surprise, but I'd certainly like
11 to brief each of those factors. Most motions that rely on CT
12 state, we're relying on --

13 THE COURT: No, you don't have to persuade me. I'm
14 going to give you the opportunity to brief it.

15 MR. NASH: And if I could just make one further point.

16 THE COURT: Yeah, go ahead.

17 MR. NASH: I'm going to use the word gloss. Maybe I
18 shouldn't, I think it's more than gloss. I think in the Second
19 Circuit, CT starts with two things, an objective and a
20 subjective prong that to get relief under CT, you have to
21 establish with evidence that it's objectively futile and
22 subjectively futile. That there is no legitimate objective
23 basis to reorganize. And the debtor doesn't want to reorganize,
24 has no intention to reorganize, just wants to delay. I don't
25 think you can get to that on the hearing of the evidence. I

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1 would also --

2 THE COURT: Yeah, let me respond to that because I
3 know what you're referring to, and I'm not sure I agree with
4 you.

5 THE COURT: So, there are other cases, not CTC, that
6 talk about there being two tests, an objective and a subjective.
7 There's several cases by Judge Brosman going back more than 20
8 years that adopt that dual standard. She was relying on an
9 earlier Second Circuit case called Cohoes, I think. CTC, I
10 believe, doesn't get into that standard. And there are later
11 decisions. For example, one by Judge Glenn and another by Judge
12 Gerber, both highly regarded colleagues of mine, that choose not
13 to follow the Judge Brosman dual standard but instead do a more
14 straightforward, largely apply the CTC, Pleasant Point factors.
15 Anyway, I'm just mentioning that because it may help focus you
16 as you brief the issue. But for today's purposes, let's walk
17 through the Pleasant Point CTC factors together. I have them in
18 front of me. So, I'm happy to tick down the list, one by one.
19 And what I'm going to ask you for each of these factors is,
20 let's assume that after briefing I conclude that this is it.
21 Right? This is the legal standard I'm required to follow. What
22 I want to get to right now, in that scenario where I'm adopting
23 this as the standard, which I haven't done yet. But if I were
24 to adopt it, do you agree that each of these facts is undisputed
25 in this case? Or if you have disputes, tell me what they are.

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1 If you think a trial is needed to address a dispute. Okay?

2 MR. NASH: Yes.

3 THE COURT: All right. So, eight factors. Factor
4 number one the debtor has only one asset.

5 MR. NASH: This debtor has one asset in the sense it
6 owns the membership interest in a hotel, which is an asset unto
7 itself. So, it has one direct asset and one very large indirect
8 asset which holds multiple property rights. It owns the hotel.
9 It operates the hotel. It has reserve funds. And it has the
10 ability to generate income. So, on a direct basis, yes.
11 Through the membership interest, no.

12 THE COURT: Okay. No, I appreciate that. And look, I
13 don't want to hide my thinking from either you or Mr. Strickon.
14 Here's my view on that issue. I agree with what you said that
15 whether the debtor has one asset or many is a matter of how you
16 interpret those words, one asset. But here's what I think
17 really matters. I think it's a question of, would keeping the
18 stay in place for this debtor further the purposes of the
19 Bankruptcy Code? And what I mean by that is, if I lifted the
20 stay and Mr. Strickon's client were to foreclose, would that
21 impair the hotel's ability to reorganize? I think that's what
22 it comes down to. I mean, that's my preliminary view based on
23 what I've seen so far. And so, you've already, I think, given
24 me your answer sitting here today to the question, what impact
25 would foreclosure have. I think your answer is, it might have

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1 bad impacts. You need to look into it further.

2 MR. NASH: And there's one obvious impact that I think
3 is important.

4 THE COURT: What's that?

5 MR. NASH: Present management is committed to getting
6 refinancing, exit financing as well as DIP financing. And so,
7 to me, that's another factual issue that we have to really
8 seriously look at. Because I think if you canvassed everybody
9 on this screen, the answer to the long term viability of the
10 hotel, and I did say in my papers, I think it is a solid asset.
11 It is a new series of lenders that can stabilize immediate
12 operations and ultimately take out the mezzanine loans. So, we
13 cannot say sitting here now, certainly without evidence, that
14 the change in management would not affect financing. And I
15 think it's a very important aspect of this case, and quite
16 frankly, in my mind, could be the most important aspect of this
17 case. Certainly to leave chapter 11 is the ability to bring in
18 new financing that deals with these situations.

19 And I don't think there's anything in the papers that
20 I saw that dealt with two things, one, eliminating any
21 possibility that there can't be new financing. There was
22 frustration from the mezzanine lender for sure that it didn't
23 happen yet. But let's look at the timing that we're talking
24 about. The default happen in April. They sent out an immediate
25 notice, and now we filed in July. So, I don't think you can

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1 make an indictment on the debtor's ability to bring new
2 financing to the table because it couldn't do it between April
3 and July. Now, obviously the filing of the chapter 11 turns up
4 the heat on, put up or shut up time in terms of financing.
5 We're aware of it, and we think we can make the case for it.
6 But we have to be, I think, and I think the court is imminently
7 fair, but I think the mezzanine lender is not fair to paint us
8 with such a broad brush and ignore a lot of these issues, which
9 they call mismanagement because certain monies are owed. New
10 money cures a lot of ills, and I think it can cure ills here.

11 And I go back to Timbers, because I did cite Timbers.
12 Quite frankly, judge, the case I most rely upon is your Holiday
13 Inn case, Golden Seashore case. I read that very closely,
14 judge, and I took some heart into that case. Why, there was a
15 seven hour trial on that case, I think you looked at it
16 correctly. Who has the burden of proof, and what do you have to
17 prove. And what the proof was, diminution in the value of the
18 collateral. And you held the lender, and I think you ruled
19 against the lender, because they didn't offer any sufficient
20 proof. They offered some proof, I don't think they offered
21 sufficient proof. And here we just have accusations,
22 allegations, and I agree, there are judgments against the hotel.
23 There was an adverse arbitration. Now, the irony of that
24 arbitration is, the hotel sent out a notice of termination
25 against Dream, and went through a three year arbitration or a

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1 two year arbitration, and the amount in issue was a million
2 dollars, but with the fees and expenses, it became \$3 million.
3 And I asked them why wasn't that settled, and both sides believe
4 they were right in their positions. Whether or not that is true
5 or untrue, that's not an indicia of mismanagement.

6 THE COURT: But I got to say, Mr. Nash, the pattern
7 here from a big picture perspective, looks like your client
8 can't get along with anybody. They're at loggerheads with their
9 franchisor and also with their food and beverage company And
10 also with their management company and also with this synagogue
11 that is out on the street because of --

12 MR. NASH: Well, if I can address each of those?
13 Those are fair points, and I'd like to address it. Okay?
14 They're in arrears with Margaritaville. But if you heard the
15 testimony, there's no notice of termination, and I don't think
16 the relationship is as fractured as the mezzanine lender
17 portrays. I do agree the relationship with Dream, who is the
18 management company, is fractured, but that management company
19 can and should be replaced.

20 The synagogue is a long standing issue. Mr. Markowitz
21 is on the Zoom. From our view, there's been no adverse
22 determination in the state court. We recognize that it has to
23 be resolved. I put in my papers, I don't think the synagogue is
24 coming back to the location. I think a lot of the relationship,
25 they didn't get final approval or there was an issue as to how

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1 it would be redeveloped physically in the basement. And I do
2 think there's a monetary issue to resolve with the synagogue.
3 And I would note, as I understand there's already \$1.7 million
4 in escrow with a title company, which can be used towards
5 resolving that. There were approximately \$5 million set aside
6 in escrow with the senior lender that was now reallocated to pay
7 down the debt. But yes, there is an issue with the synagogue.
8 I don't think it's irreparable, I think it's a long standing
9 issue on relocation, and I do think it can be resolved with a
10 fair payment to both sides.

11 THE COURT: Food and beverage, is that --

12 MR. NASH: Food and beverage, they still pay rent as
13 we speak today. So, it's back and forth. They pay us rent, we
14 owe them monies on customers. People charge it to the rooms,
15 just like you would expect. There were certain expenses that
16 we're being charged under their monetary demand that we don't
17 think belong to the hotel, we think belong to the food and
18 beverage company. But that's a reconciliation and a final
19 payment. And I think the numbers that we're talking about are
20 closer to 500,000 than over a million dollars. So, the food and
21 beverage company is still in place. They're not walking out.
22 And I'm not going to use the word "excited," but I think the
23 published reports from Margaritaville, and again, the food and
24 beverage company is not Margaritaville, but it's a preferred
25 vendor. I think Margaritaville wants to remain in Times Square,

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1 and I think we can work out our issues with them. But again, I
2 have to prove that up to Your Honor, and if I prove that up, I
3 think it's important.

4 But I also think they jumped down my throat on the
5 labor issue, and they came to all sorts of conclusions that were
6 adverse when in fact, we now have labor piece on a decent MOU,
7 which will be a part of the chapter 11 filing of the hotel. The
8 senior lender has it, and I think that's a positive step. So,
9 yes, historically there's been disputes, and I don't mean to cut
10 you off, judge. I've been involved in this since, I would say,
11 late June. And since I've been involved, I think, we've made
12 headway on a potential DIP loan. We certainly made headway on
13 an MOU with the union. And I think if you look at the operating
14 data, I think the hotel is operating very strongly. You know,
15 as Timbers says, a reasonable time to achieve a reasonable
16 reorganization, if I can keep up this pace, I think we can meet
17 that standard, and that's an important standard here.

18 So, I know the CT factors, if you look at it very
19 narrowly, and I want to brief it because I don't think you
20 should look at it that narrowly. And we go consistent on the
21 factors. One of them is no employees. True, no direct
22 employees, but certainly --

23 THE COURT: Hang on, let's do this in orderly fashion.

24 MR. NASH: Sure.

25 THE COURT: Before we continue marching down the CTC

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1 list. Because I do want to return to that. First, let me give
2 you a couple. First let me give you two reactions to what
3 you've said. First off, I fully agree with you that if we wind
4 up having to litigate the issues you just discussed, it's going
5 to be a very long trial. And if we have to litigate valuation,
6 I think, everybody on this call appreciates how expensive and
7 complicated that can be. If we have to litigate battles over
8 management dishonesty, or incompetence, or orneriness, that's
9 also messy. I am hoping that we can resolve this motion without
10 having to have a trial on either of those types of issues. I am
11 looking to see whether we can have a much more targeted trial if
12 we have a trial at all. And in my mind, the potential way to do
13 this is by focusing on the CTC factors. Because frankly, if the
14 CTC factors apply, and if you lose on them, then I don't need to
15 get into whether your clients are bad guys, or what the value of
16 the hotel is, or even whether the hotel has great prospects
17 because I'm only going to rule against you on the CTC factors if
18 I conclude that what's happening at the mezzanine level is
19 completely separate from what's happening below. And I can let
20 your lender foreclose at the mezzanine without harming the
21 hotel. If I think it harms the hotel, I'm not going to allow
22 that. Or I won't allow it with it out getting into the more
23 difficult issues. But that's the threshold question. So, let's
24 turn back to that. And you said something interesting that I
25 want to follow up on. I asked you would there be any adverse

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1 consequences from foreclosure at the mezz level, and one thing
2 you said is yup, one potential bad consequence is, my clients
3 are in great shape for getting financing. And if this lender
4 forecloses, who knows what will happen, right? That's basically
5 what you said.

6 MR. NASH: That's correct.

7 THE COURT: So, let me follow up on that. Are you
8 saying the lender would be less effective than your clients at
9 getting the financing that's needed? Or are you making an even
10 stronger argument, namely, that the lender would not be
11 interested in getting refinancing, it would just liquidate?

12 MR. NASH: I believe that if there is a change in
13 control, the likely path forward is the sale of the hotel.
14 That's what I believe. I Think --

15 THE COURT: But, I mean, is that necessarily the end
16 of the world? A new operator, a new owner comes in. They put
17 in place a new operator. Maybe the new operator gets along
18 better with Margaritaville and the other key parties than your
19 clients. Why is that a disaster?

20 MR. NASH: I think that's somewhat up in the air, who
21 would get along better.

22 THE COURT: I know. But who knows what the answer is?

23 MR. NASH: But I want to answer your question.

24 THE COURT: All right. So, why is it so terrible --

25 MR. NASH: I want to answer your question.

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1 THE COURT: Okay.

2 MR. NASH: And I think it's important that we focus on
3 this. There's a concept that's floating about in these
4 expressions, appraisals of value and so forth. It's called full
5 stabilization. Now, I think it's important because a lot of the
6 reserves that were created in 2021 went through a concept of
7 full stabilization, meaning that the hotel was up and running,
8 food and beverage was going great guns, and all the retail space
9 had been leased. I think it's very important that we underscore
10 that. We have not reached full stabilization. You know, you
11 can blame market conditions to a large extent. We can't divorce
12 ourselves of what market forces that came into play in 2023,
13 late 2022, that were not necessarily in play in 2021. And so we
14 have to work through those market forces, because I'm a believer
15 that Times Square is still a unique place in the world and that
16 retail chunk of space that we have can be rented and we can
17 achieve full stabilization. So, the value here, I think, for
18 creditors is in achieving full stabilization. And I do think
19 you need bridge financing, DIP financing, and likely two
20 tranches of DIP and exit financing to get you to that point.
21 And I do think the current management is in the best position to
22 do that. Why? They've done it twice already. The original
23 loans here were refinanced. So, back in the day, they got
24 initial financing, large amounts of money. They got those
25 refinanced in 2021. And so, these lenders came in about two

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1 years ago. And I think if you give this management team a
2 chance, I think they can refinance this type of debt as well.
3 And I don't think if you look at it, you can say that's
4 impossible. And the change in management, I think, would set
5 the hotel in another direction. So, I think that's an important
6 point to be developed at a trial as well.

7 THE COURT: Okay. I hear you. Let's go back to the
8 CTC factors. I think hopefully we can actually march through
9 the rest of them or most of the rest of them quite quickly.
10 Number two, debtor has few unsecured creditors. Would you agree
11 that the debtor has either no unsecured creditors or at most
12 two?

13 MR. NASH: I don't think I even have two. I think the
14 Con Ed is obviously at the hotel level, and I would assume the
15 vendor is at the hotel level. Directly, they have no unsecured
16 creditors. The hotel operation has quite a bunch.

17 THE COURT: Of course, you don't have to persuade me
18 of that. All right. Give me a second. Number three, the
19 debtors one asset is the subject of a foreclosure action. That
20 seems clear. Number four, the debtor's financial condition is,
21 in essence, a two party dispute, which can be resolved in the
22 foreclosure action. I assume that's a yes.

23 MR. NASH: Well, it is directly a two party dispute.

24 THE COURT: And I understand your point about
25 indirectly.

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1 MR. NASH: Right. Right.

2 THE COURT: All right.

3 MR. NASH: And I would just say, judge, so we
4 understand because I don't think we should gloss over this.
5 This was an Article 9 UCC non-judicial foreclosure. They sent
6 out a notice, notice of disposition of collateral. The
7 litigation that we're talking about is a litigation over the
8 commercial reasonableness of the notice. So, it's not a
9 conventional mortgage foreclosure where you have a judgment of
10 foreclosure, a referee's report computing outstanding amounts
11 and so forth. We didn't have that here. We had --

12 THE COURT: I know, but that doesn't necessarily mean
13 you get a bad outcome from a value standpoint. Does it?

14 MR. NASH: But I just wanted to make that distinction.
15 I understood, particularly CT, and I think even Cohoes, I think
16 they all emanated, if I'm not mistaken, all out of lender
17 foreclosures, judgments of foreclosure actions.

18 THE COURT: Okay.

19 MR. NASH: I agree they apply, regardless of a
20 judicial foreclosure or nonjudicial, but I think there is a
21 variance there.

22 THE COURT: Okay. All right, I hear you. The next
23 point, I'm not asking you to accept the characterization here,
24 but the underlying facts. The next point is the timing of the
25 debtors filing evidences an intent to delay or frustrate the

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1 legitimate efforts of the debtors secured creditors. I'm not
2 going to ask you to respond to that. But let me ask you, do you
3 agree the timing of the filing was driven by the upcoming
4 foreclosure sale?

5 MR. NASH: Most assuredly.

6 THE COURT: Yes. Okay. Next factor. The debtor has
7 little or no cash flow.

8 MR. NASH: I won't agree on that.

9 THE COURT: Okay. And are you basically pointing to
10 the six months that Mr. Strickon was talking about?

11 MR. NASH: Yes, we had cash flow. Yes, we made
12 payments. Yes, there's cash flow. I think that can come
13 through the hotel. I think if the thing is stabilized there's a
14 big group of financial investors here, judge. One of the know,
15 Mr. Strickon points to Flintlock Construction, which filed the
16 lien, but they're know part of the investor group. There's a
17 lot of people here. And the fact they've been sued on their
18 guarantees.

19 THE COURT: But I really want to focus on this as a
20 historical factor.

21 MR. NASH: Right.

22 THE COURT: Okay.

23 MR. NASH: Yes, there was cash flow until -- there
24 were reserves and cash flow up until April of this year.

25 THE COURT: Well, let me just sort of sharpen the

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1 question a little bit. Has the debtor ever had cash flow other
2 than monies that were up streamed from the hotel?

3 MR. NASH: Or were up streamed from investors. The
4 answer is, the debtor gets its money either from the hotel or of
5 its own investors, hotel investors, yes.

6 THE COURT: Okay. And the upstreaming, did it occur
7 solely during the six-month period that Mr. Strickon mentioned?

8 MR. NASH: I would have to check that. Mr. Pomerance,
9 the president, he indicated to me there was several months of
10 payments. I would have to check that. But I know we were
11 current with the mezzanine lender through April.

12 THE COURT: Okay. So, the only question is when it
13 stopped picking and started being cash.

14 Speaker A: Right.

15 THE COURT: Okay. The next point, the debtor cannot
16 meet current expenses. Is that fair?

17 MR. NASH: I don't know, and I don't mean to punt, but
18 I'm going to say this. At the mezzanine level, and this is why
19 I do think valuation is important. Whether or not there's post
20 obligations to pay post petition interest, in my mind, is a
21 function of secured or over secured nature of the debt. And I
22 did cite three possible scenarios. Under secured, partially
23 secured, over secured, equity cushion. And a lot of that can
24 flow out of evaluation. And I know valuation does take time,
25 but I think it lies at the core of this debate. Is the

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1 valuation now? And I do agree with Mr. Strickon, that it's now.
2 But you can't discount tomorrow either in terms of where we are
3 in the market and where we came from.

4 THE COURT: But let me just ask you a more focused
5 question. The debtor is currently in arrears with its secured
6 lender.

7 MR. NASH: Yes.

8 THE COURT: And it has not made payments to its
9 secured lender since March.

10 MR. NASH: April.

11 THE COURT: Okay. The last payment, I think, was in
12 March.

13 MR. NASH: March, yes.

14 THE COURT: All right. Okay. Final factor, number
15 eight, the debtor has no employees?

16 MR. NASH: Again, we have no direct. We have 75
17 indirect. And I'm very cognizant of when that payroll is due.

18 THE COURT: Okay. All right. Thank you. So, I
19 probably interrupted your argument. Were there other points you
20 wanted to make?

21 MR. NASH: But I think the court's questions may help
22 frame where I'm coming from. I'm coming from, and I think the.
23 record is not here to lift the stay either on the CT
24 under 362(d). I do take heart in your honor's decision. It's
25 got to be a diminution of value. I do take heart in the Timbers

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1 framework of effective reorganization within a reasonable period
2 of time. Reasonable reorganization within a reasonable period
3 of time.

4 THE COURT: But I'm not getting to the Timbers issue
5 if I rule on the Pleasant Point.

6 MR. NASH: Yes, I hear you. When I saw your order
7 yesterday, I knew that that would be a focus and I do appreciate
8 the heads up, so to speak, on that, but I would really like to
9 brief that because there is, in my mind, I called it in my
10 paper a symbiotic relationship. I don't know, but I think it's
11 important that I have that opportunity. And I don't want an
12 indefinite time for it, but I would certainly like to brief CT
13 in this context.

14 THE COURT: How much time do you want?

15 MR. NASH: I would ask the court until Tuesday to
16 brief that. And the reason I'd ask you, I'm on trial on Monday,
17 and I would ask the court basically the weekend and to finish it
18 up on Tuesday. I'm also working on other things related to the
19 hotel. So, I would ask till Tuesday.

20 THE COURT: Okay. All right. I think that's legit.

21 MR. STRICKON: Your Honor, may I chime in?

22 THE COURT: Yes, go ahead.

23 MR. STRICKON: I'm due to leave the country Tuesday
24 night. Could you shorten the time? Make it Saturday or Sunday?
25 How much time does counsel need to brief one case?

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1 THE COURT: So, this gets into a broader question.
2 Let me give you a couple of preliminary thoughts. Here's what I
3 want to do. Let's just talk about what we're going to do next.
4 I want to see if anybody else wants to be heard. And I would
5 like to hear, at least briefly from Mr. Petrick. I want to hear
6 his reaction, in particular, to the question that in my mind may
7 be the single most critical factual question. And that is,
8 would lifting the stay, and letting your client, Mr. Strickon,
9 foreclose, have any adverse effects on the hotel either by
10 triggering defaults under contracts that are important or by
11 potentially bolloxing up financing that's needed, or in some
12 other way? In my mind, if we're asking, do the Pleasant Point
13 factors warrant a lift-stay order, that's probably the single
14 most important issue. So, before we sort of reach decisions
15 about briefing and other next steps kind of matters, I want to
16 hear from Mr. Petrick and anyone else who wants to be heard.

17 But let me briefly say a couple of preliminary things
18 that you can all think about. Because what I'm going to suggest
19 is, we hear from anyone else who wants to be heard. We then
20 take a break. We can do a ten minute break or we could do an
21 hour break. I'll defer to counsel on what they'd prefer and
22 then we come back and talk about next steps. And when we do,
23 Mr. Strickon, the ball is sort of in your court for starters
24 because we have this 30-day deadline, right? So, if you say to
25 me, you're prepared to extend that deadline, it makes it a whole

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1 lot easier to set a schedule. If you don't agree, I realize you
2 have a client, if you don't agree, then I need to consider
3 whether I can make the finding that's required to kick out the
4 30 day deadline. I need to think about that. But what I can
5 say is, if you don't agree and if I don't feel I can make the
6 finding, then you all are going to need to act really fast,
7 because in that circumstance, Mr. Strickon, you and/or your
8 client are forcing me to have a trial next Friday, and there are
9 consequences to that. The consequences would be in terms of the
10 briefing schedule, it would have to be really fast, and also
11 your prep for trial. So, let me just plant that seed, and let
12 you think about it. And meanwhile, let's see if anybody else is
13 going to weigh in. And then I'll circle back to you before we
14 take our break.

15 MR. NASH: I raised my hand, judge. Is it possible we
16 could take a short break now?

17 THE COURT: Okay. Like as in a restroom break?

18 MR. NASH: Yes.

19 THE COURT: Okay. That's fine. And by the way, just
20 on briefing, Mr. Nash, I am going to give you until Tuesday. I
21 think that's only fair and whatever other deadlines, we'll work
22 them around that.

23 MR. STRICKON: I apologize, Your Honor, I got my
24 schedule all mixed up. Yeah, I'm available all of next week.

25 THE COURT: Oh, okay. All right. Thank you.

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1 MR. STRICKON: I'm looking at the calendar and I'm
2 getting confused on the dates.

3 THE COURT: Okay. All right, thank you for clarifying
4 that. So, it's now 1:10. We've been going for basically two
5 hours. Do people want to take a five or ten minute break and
6 resume, or do you want to break for an hour?

7 MR. STRICKON: My preference would be to take a ten
8 minute break, and see if anyone else wants to chime in.

9 THE COURT: Oh, right. Yeah, let's do that. And then
10 we'll take our lunch break.

11 MR. STRICKON: Right.

12 THE COURT: All right, we're taking a ten minute
13 break. I will see you -- it's now 1:10, I'll see you at 120.

14 MR. STRICKON: Okay. Bye.

15 (Off the record.)

16 THE COURT: Okay. Sorry to keep you waiting. I was
17 actually giving some thought to the best way to stage this going
18 forward, but let's --

19 MR. STRICKON: Your Honor, may I have two minutes to
20 respond to a couple of things that counsel for the debtor stated
21 on the record just so we're --

22 THE COURT: Well, first, let's hear from anyone else.

23 MR. STRICKON: Okay.

24 THE COURT: Then you'll do rebuttal.

25 MR. STRICKON: Thank you very much.

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1 THE COURT: So, Mr. Petrick, are you there?

2 MR. PETRICK: I am, Your Honor. And thank you for the
3 opportunity to respond to some of the questions. I do have a
4 number of points of information which I can provide to the
5 court, and hopefully, would be helpful to the court in reaching
6 a determination today. I do want to say that my client is party
7 to an intercreditor agreement with the mezzanine lender, which
8 is fairly complicated, and I want to be sure that I don't
9 trip --

10 THE COURT: They always are, aren't they?

11 MR. PETRICK: Yeah. This one is at the higher end of
12 complication, if that's possible. So, I want to make sure I
13 don't trip against any footfalls and mindful of that. But I do
14 think I can respond to some of your questions. I think
15 paramount inquiry you had, Your Honor, was whether lifting the
16 stay would be harmful to the hotel. And I can tell you that our
17 client did not oppose the foreclosure action in state court.
18 So, I think you can infer from that that we did not think it
19 would be harmful to the hotel. We know, for example, that the
20 hotel has an ability, through terms of agreements, to maintain
21 the Margarita flag if there were a change in control. So, that
22 is sort of big picture item. We do not think that a change of
23 control would be harmful to the operations of the hotel.

24 THE COURT: Just flush that out for me. What
25 agreement binds the hotel to do that?

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1 MR. PETRICK: I'm so sorry, Your Honor, I don't know
2 if I'm following your question.

3 THE COURT: You said the hotel is required to maintain
4 the Margaritaville flag.

5 MR. PETRICK: No, I think that we would have the
6 ability to negotiate with Margarita to maintain the flag if
7 there were a change in control of the hotel.

8 THE COURT: Oh, okay. You're saying you would not
9 necessarily lose the Margaritaville --

10 MR. PETRICK: That's correct. We have the ability to
11 maintain it. That's an example of not being harmed by a
12 foreclosure.

13 THE COURT: Although, frankly, the inverse of what you
14 said to me suggests -- are you saying there's a possibility that
15 the opposite is true? That the agreement would tank?

16 MR. PETRICK: No, I don't think that's the case, Your
17 Honor. There's some procedural things that would have to
18 happen, but we are confident that that flag should be
19 maintained.

20 THE COURT: Let me just push you on that a little bit.
21 So, hypothetically, we have a foreclosure sale. We have no idea
22 who the buyer will be.

23 MR. PETRICK: Right.

24 THE COURT: How do we have any way of knowing whether
25 they'll be acceptable to Margaritaville?

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1 MR. PETRICK: This is the instance where the change of
2 control becomes the mezzanine lender, not a change of control to
3 a new buyer. That may be a different issue. But in terms of
4 the mezzanine lender coming in and foreclosing on the equity,
5 that would not change the ability to the Margarita flagging of
6 the hotel.

7 THE COURT: So, let me just make sure I understand.
8 You're saying if you look at the contract between the hotel and
9 Margaritaville, there would not be a default by virtue of the
10 change of ownership?

11 MR. PETRICK: Correct.

12 THE COURT: What if new ownership puts in new
13 management?

14 MR. PETRICK: I should say that it's probably more
15 complicated than I am qualified to answer. But the change of
16 control from the current equity owner to the mezzanine lender,
17 just a simple foreclosure of that action, would not affect the
18 Margaritaville flag. And whether that would change if a new
19 management company were brought in or some other circumstances
20 when the new owner of the equity wanted to make a change or sell
21 the hotel, that's a second inquiry. But the simple act of
22 foreclosure would not affect that --

23 THE COURT: So, I understand that. But I don't see
24 how we can ignore the second question. Because isn't it
25 guaranteed that a new owner will not leave Mr. Gamal and the two

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1 Weiss brothers in place?

2 MR. PETRICK: Yes. Yes.

3 THE COURT: So, it will bring in new management.

4 MR. PETRICK: Correct.

5 THE COURT: So, the question is, and I don't want to
6 put you on the spot if you don't have the answer, but the
7 question I'm curious about is, whether that change of management
8 would trigger any problems or potential problems under the
9 Margaritaville agreement.

10 MR. PETRICK: Yeah, and we don't believe that it
11 would, Your Honor. I mean, we support the foreclosure, we
12 support that effort, and we believe all that can be managed.

13 THE COURT: And let me ask you another question, and I
14 don't mean to put you on the spot, and if you want to dodge this
15 question, you're welcome to, and I won't hold it against you,
16 but do you think the prospects of the hotel might actually be
17 better under new management?

18 MR. PETRICK: Well, I should say this to Your Honor
19 that our client has serious concerns about the management of the
20 hotel. You know, our main interest here, as the senior secure
21 lender, is protecting our collateral, the hotels collateral, and
22 the operations of the hotel. Now, that value, supporting our
23 loan, ultimately comes from the cash flow of the hotel, and how
24 it's managed in terms of the restaurants, and lawsuits, and
25 unions. And we have very serious concerns about current

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1 management and believe a change in management is in the best
2 interest of protecting our collateral.

3 THE COURT: Okay, thank you. Now I was interrupting
4 you. Was there more you wanted to say?

5 MR. PETRICK: Yes, Your Honor. You had some questions
6 about whether or not there was cash flow to the mezzanine
7 lender. And we do have some information that there was
8 insufficient cash flow coming from the hotel from the period of
9 October to March to service the debt. There was cash flow
10 provided to the mezzanine lender from other sources, not from
11 hotel revenue, or excess cash flow, or net cash flow from a
12 hotel that was used to pay the mezzanine lender. But the source
13 of that cash flow was not operating income or net cash flow from
14 the hotel. So, I know it's a little bit of a hybrid, but that,
15 factually, is how it happened.

16 THE COURT: Can you tell me in broad strokes what the
17 source was?

18 MR. PETRICK: I am not entirely -- I don't know, Your
19 Honor, other than my client knows that it was not from a hotel.
20 I think Mr. Nash indicated it might have been from investors in
21 the hotel, but other than that, I don't know.

22 THE COURT: Okay. All right.

23 MR. PETRICK: I guess the important point from our
24 perspective, Your Honor, is that there is imminently going to be
25 a filing of the hotel, and we have urged Mr. Nash, orally and

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1 through letters, to avoid that result. And frankly, that result
2 is being triggered by this filing of the mezzanine lender. But
3 from our point of view, everything that would have to be
4 achieved at the hotel level in terms of refinancing, the
5 synagogue, the union, all those events could happen outside of
6 chapter 11 at a much lower cost. This is an asset that is
7 struggling, maybe recovering, but chapter 11 is not good for its
8 value. And we have urged Mr. Nash not to file the hotel in our
9 view that the results of that chapter 11 can be achieved
10 outside. So, that sort of supports our view that, but for this
11 proceeding, that wouldn't happen, and we're trying to avoid that
12 result. Mr. Nash, obviously, and the members will do what
13 they're going to do, but that has been our consistent position
14 with him.

15 THE COURT: So, I don't want to ask you to speculate,
16 and I am going to ask Mr. Nash when you're done, to give his
17 input on this, but why is the hotel about to file, despite the
18 position you're taking?

19 MR. PETRICK: Well, I'll let Mr. Nash speak for
20 himself, but what he has said to us is, he thinks it's needed to
21 have a comprehensive restructuring in that it can't -- I don't
22 know if it's more difficult or if it's impossible to achieve,
23 but that's the rationale that's been articulated to us, and we
24 have had some substantial discussion about.

25 THE COURT: Okay. I appreciate that. I don't want to

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1 press you further. I'll let Mr. Nash speak for himself on that.

2 MR. PETRICK: Thank you, Your Honor, I think that's
3 all the information I have to share with the court.

4 THE COURT: Okay. All right, thank you. Mr. Petrick.
5 I'm going to turn back to Mr. Nash, and then as the last
6 speaker, Mr. Strickon. But before I do, is there anybody else
7 who wants to be heard?

8 MS. BERNSTEIN: Yes, Your Honor. Hi. Deborah
9 Bernstein. I've been representing the Garment Center in the
10 state court litigation, and I know this is not the most germane
11 issue to the motion before the court, but Your Honor did mention
12 about the debtor not seeming to get along with anyone and that
13 could not be more true with respect to my client. I just wanted
14 to clear the record because there are some misstatements in the
15 papers and today with respect to what's been going on there.
16 The only reason that it's been dragging on is because the
17 developer, the debtor, has not been moving forward with its
18 obligations to the synagogue. The synagogue certainly does want
19 to be back in that space. At the request of developer, they
20 were entertaining some discussion of a payment, but they
21 primarily want to be back in that space. And I know in the
22 papers it said something about the GCC matter will be resolved
23 once GCC makes up its mind as to how it wants to proceed. And
24 that's entirely inaccurate. It's the developer, the principles
25 of the debtor here, that have just been really stringing along

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1 the congregation and not moving forward at all with building out
2 the synagogue for them.

3 THE COURT: Can you help me understand? I actually
4 read a portion of your complaint. Just the first few pages.
5 But just give me the context. Your rights, your clients rights,
6 arise under what? Is it a ground lease or something else?

7 MS. BERNSTEIN: Yes, it's a lease. Our client sold
8 the building to one of its members. They cofounded the New
9 School, back in the in return got a 99 year lease for one
10 dollars a year payment. And in that lease there are subsequent
11 amendments, and there's a right pursuant to amendments to the
12 lease for the congregation to have a new space built in the
13 building if there's any redevelopment of the property, which
14 there was by the debtor here, the debtor's other entity.

15 THE COURT: So, the lease that you have, the dollar a
16 year lease, is that a ground lease?

17 MS. BERNSTEIN: Yes, I guess it would be a ground
18 lease, as opposed to?

19 THE COURT: As opposed to a lease on the building
20 constructed on top of the ground.

21 MS. BERNSTEIN: There's a right in there for the
22 synagogue to be built in whatever the new building is.

23 THE COURT: So, basically the synagogue had its own
24 building, a synagogue, on the space, which was demolished to
25 build a space for the New School.

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1 MS. BERNSTEIN: Right. The synagogue was on the
2 ground and/or basement of that building. It was the School of
3 Visual Arts or one of those. I'm maybe getting the name wrong,
4 but it was a part of the New School that then relocated. So,
5 there were other things in the building. And the building was
6 eventually sold, I think it was of around 2016 or so to the
7 developer.

8 THE COURT: So, the developer's purchase is subject to
9 this lease, whether it's a ground lease or something else.

10 MS. BERNSTEIN: Right.

11 THE COURT: And so, your rights continue as against
12 the current owner, the developer.

13 MS. BERNSTEIN: Correct. And the memo or lease is
14 actually recorded in Acris and those rights continue. I don't
15 think there's any question about that.

16 THE COURT: Have they asserted any defense?

17 MS. BERNSTEIN: No real viable defense. No.

18 THE COURT: Well, I can't take your word for that.

19 Give me the 32nd version for what their defenses are.

20 MS. BERNSTEIN: I'm not recalling what it says in
21 their answer, but there really is no --

22 MR. CZERNIAWSKI: Your Honor, could I speak? Could I
23 speak? I am counsel for the defendants in this case, and I just
24 heard this going on.

25 THE COURT: Mr. Markovitz, identify yourself, please.

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1 MR. CZERNIAWSKI: I'm Joseph E. Czerniawski --

2 THE COURT: Oh.

3 MR. CZERNIAWSKI: -- from Condon & Forsyth. I
4 represent 560 Seventh Avenue in the Garment Center Congregation,
5 and I'm very upset about what's going on here. I was not told
6 they would be making an appearance and making any presentation.
7 We just had a conference in the U.S. Supreme Court, it was not
8 told to me that this would be happening. They are fully aware
9 of the bankruptcy filings. And I'd like to speak because what
10 I've heard is outrageous.

11 THE COURT: Okay. So, pause for a second, please.
12 I'm going to let Ms. Bernstein finish. Maybe she's finished
13 already, and then I will let you respond.

14 MS. BERNSTEIN: Thank you. Yeah, I'm not sure -- I
15 can also respond to what was just said.

16 THE COURT: No. I want to limit the amount of back
17 and forth. So, it sounds like you made the basic points you
18 want to make, Ms. Bernstein?

19 MS. BERNSTEIN: And I was just as I was interrupted by
20 Mr. Czerniawski, I just was about to say that I think there
21 were, like, the kind of blanket defenses in the boilerplate,
22 defenses in the answer, but there is a counterclaim regarding
23 the purported holdover from the temporary space that was leased.
24 But that's kind of a separate issue. But in terms of a
25 substantive defense, the developer has been talking about moving

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1 forward. And we were recently told that he has the team
2 assembled, and he is moving forward with the build out. And we
3 had a meeting in the middle of June where his architect was
4 there and was meeting at Mr. Czerniawski's office --

5 THE COURT: Okay. You know what, at this point, I'm
6 going to cut you off. I recognize I did invite this, but I'm
7 trying to strike a balance between having a general sense of the
8 overall context, but not going too far beyond that. So, thank
9 you, Ms. Bernstein. Mr. Czerniawski, let me just assure you
10 before you proceed, I am certainly not making any findings of
11 fact. I'm a litigator my entire career, so I understand the
12 difference between argument and evidence. This is not evidence.
13 But that said, it's only fair since the congregation has shared
14 its perspective, so, I'm happy to hear your perspective in
15 response.

16 MR. CZERNIAWSKI: Thank you, Your Honor. First of
17 all, I'd like to point out that we had a conference only a week
18 ago in front of the New York Supreme Judge's law clerk in the
19 lawsuit. The bankruptcy, this bankruptcy and the upcoming
20 bankruptcy were openly discussed. No mention was made. There
21 would be an appearance or anything like that in front of Your
22 Honor. Obviously, I would have appeared.

23 THE COURT: Well, you're here.

24 MR. CZERNIAWSKI: And here I am. Here I am. Number
25 one, the congregation. We have counterclaims against

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1 congregation; they're significant. Because what happened is
2 during COVID there were temporary quarters. They abandoned the
3 space, and then after abandoning the space, the lease expired.
4 After the lease expired, they refused to remove their
5 belongings, and then wouldn't allow us to get their belongings.
6 It took, I think, a period of eight to nine months because of
7 COVID restrictions, because of congregation's refusal for us to
8 get the belongings, get their permission to remove them from
9 temporary space. And it cost us a judgment, which we suffered,
10 I believe, over a million dollars. And that is part of the
11 counterclaim. It's certainly significant. As for the issues
12 with regard to building the synagogue or an alternative
13 settlement arrangement, the bottom line is --

14 THE COURT: I don't want to hear about settlement.

15 MR. CZERNIAWSKI: Okay. I get it. The bottom line is
16 resolutions were discussed, one of which is building out the
17 synagogue in the current space. Plans were made to be moving
18 forward, but events overtook us. Events, primarily being, the
19 filing of the mezz bankruptcy, which is currently in front of
20 you, and the knowledge, full knowledge, that there is a coming
21 bankruptcy of the primary entity. I let counsel know that.
22 They're fully aware that really the hang up here is simply that
23 it's kind of hard to deal with the micro issues until the macro
24 issues are sorted out. And we have full intention of being able
25 to work with counsel ultimately, whether it probably will be in

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1 this court on resolving it and sorting through the issues. I'm
2 just upset because I would have been here --

3 THE COURT: That's all right. I don't need to hear
4 more about why you're upset. I think I've now gotten your
5 perspective on the substance, correct?

6 MR. CZERNIAWSKI: Yes, Your Honor. But obviously if
7 we need to talk more about it, I'm happy to do.

8 THE COURT: No. Let me make a few things clear. And
9 this is my fault for not making this clear earlier. First off,
10 as you may or may not know, Mr. Czerniawski, today's hearing
11 began with a status conference, and we then turned to the lift-
12 stay motion. This is really something that probably I should
13 have invited Ms. Bernstein to address at the status conference
14 because I do not view this as related -- this is not something
15 I'm going to consider in connection with the left stay motion,
16 the whole dynamic back and forth with GCC. I do think it's
17 something that generally at status conferences, in cases like
18 this, I like to understand the big context. I like all the
19 affected parties to be able to have their say and tell me their
20 story, and I treat it as context and as raising issues that I
21 may or may not at some point need to take evidence on. But to
22 be crystal clear, nothing any of you say today on any subject is
23 evidence, and I will not treat it as such. So, anyway, I hope
24 that context is a little bit helpful in allaying your concerns,
25 Mr. Czerniawski. But I appreciate your giving me your

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1 perspective.

2 MR. CZERNIAWSKI: Thank you, Your Honor.

3 THE COURT: Okay. Is there anybody else who wishes to
4 be heard before we turn back, first to Mr. Nash and then to Mr.
5 Strickon?

6 MS. APPLEBY: Your Honor, I apologize, I had not filed
7 an appearance at the beginning. This is Laura Appleby of Faegre
8 Drinker Biddle Reath. We represent the junior mezzanine lender.
9 We're Global One Professional Investment Type -- it's a long
10 Private U.S. Real Estate Investment Trust No. 1-H and Global One
11 Professional Investment Type Private U.S. Real Estate Investment
12 Trust No. 2-H. Similar to the senior lenders, we're also
13 subject to a very complicated intercreditor agreement. So, we
14 were just monitoring the hearing today. But I just wanted to
15 make sure that the record was correct. I think Mr. Strickon had
16 misspoken when he had mentioned the amount due to the junior
17 mezz lender. The amount due to the junior men's lender, we
18 assert, is 113,000,000. A little over 113,000,000 as of July
19 28th of 2023. So, I just wanted to make sure the record was
20 corrected right.

21 THE COURT: Right. And I think he might have said it
22 was 13 million.

23 MS. APPLEBY: 11 million.

24 THE COURT: Okay. Right. That did catch my notice
25 that it was a smaller amount than I expected. Okay. Was there

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1 anything else you wanted to add?

2 MS. APPLEBY: No, Your Honor.

3 THE COURT: Okay. All right, thank you. All right.
4 Mr. Nash?

5 MR. NASH: Yes? I think the question to me is, why
6 does my client and I see the necessity of a chapter 11 for the
7 hotel? And there's two points to that. We do believe that we
8 do need new financing to come in here. We think a chapter 11
9 gives the clearest path to get new financing to deal with any
10 objections that could be raised to that, gives order and
11 structure to new financing, and gives comfort to prospective
12 lenders where they would stack on new financing given the
13 various different types of liens that are out there, judgments
14 and so forth. So, we believe that the DIP financing is a key
15 component, and chapter 11 gives us the best opportunity to
16 obtain financing.

17 We also don't want to get into a situation where we're
18 subject to notices of termination on any critical contracts, and
19 the automatic stay would prevent that. The third reason I think
20 is --

21 THE COURT: I'm sorry, repeat the last point for me,
22 please.

23 MR. NASH: My point is, a chapter 11 would preserve
24 the status quo on all important contracts without getting into a
25 notice of termination situation or a notice of default

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1 situation, where we would have to go into state court and get
2 interim relief. I think it's a status quo type of situation.
3 And the third --

4 THE COURT: If I don't follow that. What sorts of
5 defaults are you facing that chapter 11 would cure?

6 MR. NASH: I think it gives us the opportunity to cure
7 any defaults under the existing food and beverage lease. I
8 think it would give us the opportunity to cure any defaults
9 under the franchise agreement. So, those are two very big
10 points that chapter 11 does. It also gives us the opportunity
11 to change management companies in a more streamlined fashion.
12 And so, that's another bonus that I see to chapter 11. And the
13 third bonus, I'm a big believer that chapter 11 is the best
14 place to negotiate with creditors, to get the best results with
15 creditors. The apparatus is here, obviously, to do that. And
16 when you have a myriad of outstanding liabilities and a myriad
17 of financial issues, not that chapter 11 is a safe harbor,
18 there's a lot of work involved, but chapter 11 gives you the
19 best opportunity to deal with a myriad of issues at the same
20 time.

21 Now, from a senior lender perspective, I understand,
22 we have had conversations about this, and I've explained to him
23 that when I say I need a global restructuring, more than the
24 senior debt is involved. And despite their feelings and my
25 feelings, I think the cash collateral order and stipulation

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1 we're negotiating, I think is a fair way of accommodating the
2 party's respective concerns.

3 THE COURT: Okay. Thank you. Mr. Nash. Mr.
4 Strickon, rebuttal?

5 MR. STRICKON: Just a few brief closing points, Your
6 Honor. Number one, we reiterate that we believe that change in
7 ownership of the primary hotel owning entity is not going to
8 impact operations. In fact, we believe that it will improve
9 operations because it gives a new owner an opportunity to deal
10 on a more sound basis with the creditors. We've also confirmed
11 with our clients that to the best of their knowledge, the
12 payments that were made during that six-month period did not
13 come from cash flow from the operation of the hotel, but from a
14 third party source as an equity infusion. And I think that was
15 the same knowledge that One Williams Street, the mortgagee, has
16 as to the source of those funds.

17 It's strange to hear Mr. Nash argue that the best
18 route for the hotel is filing a chapter 11 petition because they
19 could use it to cure the franchise agreement with Margaritaville
20 and the food and beverage lease, but at the same time, he argued
21 earlier, that while there are arrears under these contracts,
22 nobody has ever sought to terminate them or to enforce any
23 alleged defaults.

24 Your Honor also indicated that the record might be
25 deficient in whether or not the claim and the security for our

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1 client's claim is adequately established in the record. I will
2 point out that at no time in the state court litigation and at
3 no time in connection with the UCC disposition was there ever a
4 claim that the debt or the lien were not enforceable. And in
5 fact, if we're required to put in documentation to support that
6 fact, which would be the loan agreement and the pledge
7 agreement, we would also be submitting an opinion of Mr. Nash's
8 counsel who represented the borrower in connection with the
9 financing. It was an enforceability opinion that the debt and
10 the lien were fully valid and enforceable.

11 Other than that, I think that the record is pretty
12 clear that the operation of the hotel is seriously lacking and
13 the best course of action here would be to permit the UCC
14 disposition to proceed and to change management.

15 THE COURT: Okay. Thank you, Mr. Strickon.

16 MR. STRICKON: I'd also like to mention that under
17 this complicated intercreditor agreement, which I can't say that
18 I'm fully familiar with all of the intricate terms and
19 conditions, the junior mezzanine lender would have to pay off or
20 refinance the mortgage on the property, unless it reached
21 another accommodation with the senior lender. And because
22 that's its business, it would have no problem in raising the
23 necessary funds that would be necessary to satisfy the
24 mortgagee.

25 THE COURT: I apologize, but can you say that point

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1 one more time?

2 MR. STRICKON: Yeah. There was an issue raised that a
3 change in ownership might trigger a default under the senior
4 mortgage on the property. What I'm saying is, under the terms
5 of the intercreditor agreement, our client would be obligated,
6 if he wants to save its collateral, obviously, to either pay off
7 or refinance the senior mortgage. And since that is its
8 business, financing, it certainly has the capability of doing so
9 a lot better than the debtor has in trying to get refinancing
10 with a third party.

11 THE COURT: Okay. Got it.

12 MR. STRICKON: Thank you.

13 THE COURT: Thank you. All right, let me tell you
14 what I'm thinking about, next steps. We need to have briefing.
15 I want to give Mr. Nash the opportunity to brief the Pleasant
16 Point issues. I think we've come to rest on next Tuesday being
17 the date. Although let's just put a pin in that. I'm not going
18 to shorten that, but possibly return to that after we discuss
19 other matters. So, I'm persuaded that we need to have an
20 evidentiary hearing, but I would like to stage the proceedings.
21 That is, Mr. Strickon, as I see it, you advance essentially
22 three different grounds for lifting the stay, in broad strokes.
23 One, Pleasant Point. Two, adequate protection, including the
24 risks you perceive to the collateral from what you view as
25 mismanagement. And three, 362(d)(2), the two part analysis that

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1 that entails.

2 My view is that your simplest and strongest case is
3 the first of the three I mentioned, the Pleasant Point, and I
4 think you agree with me on that. So, I'm inclined to schedule
5 an evidentiary hearing on that topic alone. That is, namely,
6 should I list the stay on the ground that it's warranted under
7 the Pleasant Point factors as incorporated by the -- well, by
8 the Pleasant Point factors, with one footnote. And that is, Mr.
9 Nash is going to brief how the legal standard before me may be
10 some variation on a simple application of the Pleasant Point
11 factors. And I'm not going to rule before I see his briefing on
12 that issue. That is precisely what the legal standard is for
13 lifting the stay on the ground, essentially, that this is a
14 single asset debtor and a two party dispute, that the legal
15 standard may be Pleasant Point, it may be some variation on
16 that. But that's the issue I want to schedule an evidentiary
17 hearing on, and I don't want the parties to put on evidence
18 that's needed only for what I've called points two and three.
19 That is, the adequate protection ground or the 362(d)(2) ground.
20 Those bases for lifting the stay, Mr. Strickon, you're
21 reserving. If you win on Pleasant Point, we don't need to get
22 to them. If you lose on Pleasant Point, then we'll schedule
23 them. But I just think it's much more efficient to not do it
24 all at once because I think a trial on two and three would be a
25 much more burdensome and complex matter than a trial on number

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1 one. So, let me just pause and ask each of you in turn if you
2 have questions or comments about that approach.

3 MR. NASH: I don't, Your Honor.

4 THE COURT: Okay. You're okay with that approach?

5 MR. STRICKON: Yeah, I'm fine, Your Honor.

6 THE COURT: Okay. You're both okay with that. Okay.
7 All right. So, let's talk timing. And as I mentioned earlier,
8 as a threshold matter, the ball is in Mr. Strickon's court to
9 tell me, do you want to waive the 30-day limitation of 362(e) to
10 allow this trial to occur sometime later than next Friday, or is
11 it your position that I'm required to hold the trial no later
12 than next Friday?

13 MR. STRICKON: I haven't confirmed with our client
14 yet, but my question is, can we hold it any earlier than Friday
15 of next week? Because I think that there isn't any factual
16 matter that has to be developed between now and then.

17 THE COURT: You're saying you don't need discovery?

18 MR. STRICKON: We don't need discovery.

19 THE COURT: Okay. Mr. Nash, I don't want to urge you
20 to take discovery, but are you going to take the position you
21 need discovery or not?

22 MR. NASH: Yes. But not a lot.

23 MR. STRICKON: Of course.

24 MR. NASH: Not of course, but not a lot. But I'm
25 going to brief the issues on Tuesday. I would have hoped Mr.

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1 Strickon would have agreed that we could have the trial the
2 following week, so we could have adequate time to prepare. I
3 recognize it's streamlined, but we do need to prepare, and so,
4 I'm hoping that we can get a date the following week.

5 THE COURT: Tell me what discovery you think you need,
6 Mr. Nash.

7 MR. NASH: I would like to take some discovery,
8 depending on where the criteria lays out, as to the secured
9 creditors' amount of its claim, and it's --.

10 THE COURT: I'm sorry, I didn't hear you. The secured
11 creditors?

12 MR. NASH: The amount of its, and how it's computed,
13 and how it went about perfecting its claim, when it received
14 monies, the allocation of those monies, and why the payment
15 stopped, which go to the element of -- I would use the word
16 generically -- cash flow.

17 THE COURT: I am struggling --

18 MR. STRICKON: I am too.

19 THE COURT: -- with that. Let me share a little bit
20 more of my thinking about the issues that we're going to be
21 trying in stage one, Pleasant Point. It seems to me, the by far
22 central issue, possibly the only issue, but certainly the
23 central issue, is what I would think of it in shorthand, as the
24 intertwining issue. To put it differently, would foreclosure by
25 the mezz lender pose a significant risk of harm to the hotel's

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1 ability to reorganize or to keep going as a going concern? To
2 me, that's far and away the biggest issue, and I don't know the
3 answer to that. I need a trial to decide the answer. With that
4 context, Mr. Nash, do you really need discovery? And if so,
5 why?

6 MR. NASH: Well, no, I recognize that burden would be
7 on me to establish that for you. I was just going over in my
8 mind the factors, because I don't think there's full agreement
9 on it in terms of the payment history and the source of the
10 payment history to the mezzanine lender. And I do believe,
11 depending on what further documents I look at, that establishing
12 a valid claim for a valid amount would be involved in this
13 hearing. Either we stipulated to it or we stipulate to what's
14 in dispute. So, those are the only two points where I would
15 need to seek anything from the lender. And I recognize the
16 burdens on me on that particular issue, that I have to present
17 evidence in favor of those points.

18 THE COURT: Let's just parse through those a little
19 bit. The amounts of the payments that were made, that's in your
20 possession, your client's possession. It's also in the lender's
21 possession. But I assume your clients know the amounts they
22 paid. And I assume your clients know the sources of those
23 payments.

24 MR. NASH: Correct.

25 THE COURT: Okay. So, I'm still struggling to see --

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1 MR. NASH: Judge, I'm not trying to delay it, and I'm
2 not trying to make more work for myself. I would like discovery
3 or no discovery. I'd like to take the following week so I can
4 prepare, and I will have my briefing on Tuesday.

5 THE COURT: Before I circle back to timing, let me
6 touch on one substance issue that might affect timing. Mr.
7 Strickon, as I mentioned earlier, you are going to need to prove
8 the validity of your liens. I'm not sure it's critical that you
9 prove the amount of your liens. whether it's 65 or 85 or some
10 other number, I'm not sure that matters at all. It's certainly
11 not certainly not centrally important. But the validity of your
12 liens, that's critical. Now, as a first step, maybe the right
13 first step is, maybe Mr. Nash, after he thinks about it, I don't
14 want to put you on the spot, Mr. Nash will tell you he doesn't
15 dispute the validity of the liens.

16 MR. STRICKON: I would hope Mr. Nash does not dispute
17 the validity of the lien, because if necessary, we would have to
18 subpoena his firm to show to any hearing to testify and back up
19 their opinion letter that was delivered to --

20 THE COURT: You can put in his opinion letter. You
21 don't need testimony for that.

22 MR. STRICKON: Okay. Well, we have an opinion letter
23 from Goldberg Weprin that the pledge and the lien are valid and
24 enforceable.

25 THE COURT: So, Mr. Nash, I don't want to put you on

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1 the spot, and if you need time to consider this, that's your
2 prerogative, but can you respond sitting here now?

3 MR. NASH: I would like to think about it, but I know
4 what the opinion letter would say. It wouldn't say that it's
5 valid, enforceable, it would say that it's authorized and that
6 the perfection of it is up to the lender, because that's what
7 every one of our opinions say. I'd be very surprised if it said
8 otherwise. But having said that, I will get back to Mr.
9 Strickon tomorrow morning as to that, and we'll have a
10 conversation about perfection. That is the only issue. They
11 signed a note, they signed a pledge agreement, and the question
12 is perfection. That's it.

13 THE COURT: That sounds right to me, that the only
14 issue is perfection. So, okay. I urge the two of you to
15 resolve it unless there's a genuine issue there.

16 MR. STRICKON: What I can offer, Your Honor, is, let's
17 say by Monday morning to give a full accounting of the loan and
18 the calculations of the amount due. It was attached as one of
19 the exhibits to our reply papers, the breakdown of the claim,
20 but I'm certainly amenable to providing him with a full,
21 detailed accounting, which he's entitled to.

22 THE COURT: I think that's constructive. I don't want
23 to get in between the two of you and the nitty gritty. Let me
24 just urge the two of you to try to work out the amount and
25 the --

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1 MR. STRICKON: The perfection.

2 THE COURT: -- validity of payments, the history, as
3 well as perfection.

4 MR. STRICKON: Okay.

5 THE COURT: I have confidence the two of you will work
6 it out and reach an agreement, unless there's a genuine dispute.
7 Okay. Timing. Yeah, Mr. Strickon, I'm going to lean on you to
8 agree to kick this into the week of August 14th. Is that
9 something you can do? Do you need to take a break and talk to
10 your client?

11 MR. STRICKON: Yeah, I'm sure I can convince the
12 client if we can push it off, to say, the 14th of August at the
13 latest.

14 THE COURT: I'm going to propose the 15th. Oh, hang
15 on. Hang on. I'm looking at my calendar. Just give me a
16 second.

17 MR. STRICKON: Surely.

18 THE COURT: I think I'm having a trial on a Monday is
19 just a very bad idea, especially for the lawyers, as you'll
20 spend the whole weekend doing nothing but preparing.

21 MR. STRICKON: No, I look at the weekend as available
22 to prepare.

23 THE COURT: Okay.

24 MR. NASH: So, do I.

25 THE COURT: All right. Okay. It also does impose a

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1 burden on my chambers in terms of prep. I have something that
2 may or may not be big on Tuesday, so it will be big unless it
3 settles. So, I'd really rather not do Monday or Tuesday. I'm
4 going to propose Wednesday the 16th. No, I'm sorry. Yeah,
5 Wednesday, the 16th.

6 MR. STRICKON: Okay. I'm going to have to consult
7 with our clients on that, Your Honor.

8 THE COURT: Okay. Okay. And Mr. Nash, if we get a
9 thumbs up from Mr. Strickon, does that work for you?

10 MR. NASH: Yes, I will make it work.

11 THE COURT: Okay. And this tentative date, subject to
12 hearing back from Mr. Strickon, 10 a.m. on Wednesday, August
13 16th. Okay. Then to circle back to briefing, Mr. Nash, you'll
14 file your brief next Tuesday?

15 MR. NASH: Yes.

16 THE COURT: Okay. All right. And just to make sure
17 I'm not leaving any procedural requirements dangling, I'm going
18 to make a finding right now that -- give me one second, please.
19 Let me pause. I'm just going to go off camera for one minute.
20 I'll be back in just a minute. (Brief pause.)

21 Okay. All right, I'm back. So, I want to address a
22 couple of aspects of next steps. First, as I already mentioned,
23 I'm ruling that the final hearing on the lift-stay motion is
24 going to be held in stages. The first stage we are tentatively
25 scheduling for Wednesday, August 16th at 10:00 a.m., subject to

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1 Mr. Strickon, confirming to me by noon tomorrow. Can you do
2 that, Mr. Strickon?

3 MR. STRICKON: Yes, I can.

4 THE COURT: Okay. So, by noon tomorrow, Mr. Strickon
5 will let me know whether or not his client consents to holding
6 stage one of the lift-stay final hearing more than 30 days after
7 the filing of his motion, namely on August 16th. If Mr. Strickon
8 says yes, then we're all set for the August 16th date. If Mr.
9 Strickon says no, then I want to hold a status conference
10 tomorrow afternoon. Unless you all tell me this time does not
11 work, I'm going to propose 2 p.m. tomorrow. Does that work?

12 MR. STRICKON: Yes, Your Honor.

13 THE COURT: Mr. Nash?

14 MR. NASH: Can we make it at 3:00, judge?

15 THE COURT: We can make it at 3:00, yeah.

16 MR. STRICKON: Yes, that's fine.

17 THE COURT: Okay. So, if Mr. Strickon says no, his
18 client does not consent to the August 16th setting, I will rule
19 at three o'clock tomorrow on when I'm going to set that hearing
20 date. As part of that ruling, I will indicate whether or not I
21 find that there is a reasonable likelihood that the debtor will
22 win at stage one of the lift-stay trial. And I'm quoting the
23 language from 362(e)(1). If I find there is such a reasonable
24 likelihood, then I will confirm the August 16th hearing date. If
25 I find there is not, then in that event, the stage one hearing

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1 will be held a week from tomorrow, namely August 11th at 10:00
2 a.m. And let me just pause and ask Mr. Nash and Mr. Strickon,
3 is that okay, the August 11th date?

4 MR. STRICKON: I am supposed to be flying to
5 Indianapolis on Friday. Could we push that earlier in the week?

6 THE COURT: I think earlier in the week is problematic
7 because we're talking about a genuine evidentiary hearing.

8 MR. STRICKON: Yeah.

9 THE COURT: And Mr. Nash's brief is only coming in on
10 Tuesday.

11 MR. STRICKON: Or put it down for Monday the 14th.

12 THE COURT: Well, I'm happy to do that. It requires
13 your client's consent.

14 MR. STRICKON: Yeah, as I say, I think the best thing
15 to do is to give me an opportunity of conferring with our
16 clients as to all of these scheduling issues, and then we can
17 finalize dates and times when we confer tomorrow.

18 THE COURT: Okay. All right.

19 MR. STRICKON: Maybe a status conference tomorrow may
20 be the best alternative rather than speculating.

21 THE COURT: Well, but I want to hear from you. I want
22 you to send a letter to the court by noon tomorrow saying yes or
23 no on the August 16th date.

24 MR. STRICKON: Okay.

25 THE COURT: Because I want to then consider if the

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1 answer is no.

2 MR. STRICKON: Okay. All right. So, we'll put it
3 down for August 11th at 10:00 a.m.

4 THE COURT: Okay. All right. So, let me amend what I
5 said a few minutes ago. Mr. Strickon, by noon tomorrow, we'll
6 send that letter to the court. If the answer is yes, then I'm -
7 - you know what, let's hold the three o'clock status conference
8 anyway, because I think, if Mr. Strickon says no, we'll need it
9 for me to rule on the (e) issue and to set a new trial date.
10 And whether Mr. Strickon says yes or no, I think it's probably
11 useful to have the status conference to address trial
12 procedures.

13 MR. STRICKON: Yeah, that's what I was doing.

14 THE COURT: Exhibits, whether we do declarations for
15 witnesses' direct testimony, which is something I'm often
16 amenable to in the first instance. I view it as an issue where
17 you each should tell me if you want to do that or not. So,
18 please give some thought to those issues, and we will discuss
19 them tomorrow at 3:00.

20 MR. STRICKON: Okay.

21 THE COURT: Okay. The final thing I want to address -
22 - no, actually, I'll address the 362(e) issue as to all aspects
23 of your motion at tomorrow's three o'clock. Okay. All right.
24 I think that was all I wanted to cover. Do either of you have
25 any questions or comments?

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1 MR. NASH: No, Your Honor. I'm sure I speak for
2 everybody, we appreciate your time, and we appreciate the time
3 you've devoted today.

4 THE COURT: Okay. Mr. Strickon, no questions?

5 MR. STRICKON: No. Thank you again, Your Honor, for
6 spending the necessary time on this.

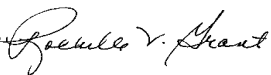
7 THE COURT: Okay. All right. Thanks everybody. And
8 we'll send out a notice for tomorrow's three o'clock hearing.
9 It will be a Zoom hearing like this one was.

10 ALL COUNSEL: Thank you, Your Honor.

11 - o0o -

12 CERTIFICATION

13 I, Rochelle V. Grant, approved transcriber, certify that the
14 foregoing is a correct transcript from the official electronic
15 sound recording of the proceedings in this matter, 23-11071-pb,
16 held on 8/3/23.

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18 August 5, 2023
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